3 1761 11766750 1

GOV
DOC.

Employment and Immigration Canada
Emploi et Immigration Canada

IMMIGRATION INQUIRIES

Emploi et Immigration Canada
Employment and Immigration Canada

ENQUÊTES DE L'IMMIGRATION

TRANSMITTAL REGISTER – REGISTRE DES ENVOIS

Nº.	INSERTED BY INSÉRÉ PAR	
	on date la date	initials initiales
93–01	05.93	E&P
93-03	4/12/93	[illegible]
93-04	4/12/93	[illegible]
93-05	30/01/94	[illegible]
94-02	11/12/94	[illegible]
95-02	16/1/96	Sara
96-06	10/10/96	Hanif
96-01	10/16/96	David Mck
99-01	13/12/99	[illegible]
2001-01	05/05/01	DS.

Nº.	INSERTED BY INSÉRÉ PAR	
	on date la date	initials initiales

Nº.	INSERTED BY INSÉRÉ PAR	
	on date la date	initials initiales

Employment and Immigration Canada
Emploi et Immigration Canada

IMMIGRATION INQUIRIES

Emploi et Immigration Canada
Employment and Immigration Canada

ENQUÊTES DE L'IMMIGRATION

Nº.	INSERTED BY / INSÉRÉ PAR	
	on date / la date	initials / initiales

Government Publications

TRANSMITTAL NO. 2001-01

(LAST TRANSMITTAL WAS EC 99-01)

DELETE	INSERT
Chapter EC 10 in its entirety	**Chapter EC 10** in its entirety

(également disponible en français)

NOTE: For paper economy, CIC manuals contain no blank pages.

For inquiries regarding distribution, please contact:

Official holders **(613) 957-9980** **Fax: (613) 957-3977**
Public subscribers **(819) 956-4800**

E-publications & Forms
Information Management Directorate
Information Management and Technologies Branch
NHQ

LIBRARY
MAY 6 2002
University of Toronto

October 2001

Enforcement and Control

Government Publications

TRANSMITTAL NO. 99–01

DELETE	INSERT
From chaper EC–1 Pages 37 and 38, Appendix J, pages 69 to 73.	**In chapter EC–1** Pages 37 and 38, Appendix J, pages 69 to 73.
From chaper EC–2 Appendix I, pages 79 and 80.	**In chaper EC–2** Appendix I, pages 79 and 80.
From chaper EC–5 Pages 5 and 6	**In chaper EC–5** Pages 5 and 6
From chaper EC–6 Appendix G, page 65.	**In chaper EC–6** Appendix G, page 65.

(ÉGALEMENT DISPONIBLE EN FRANÇAIS)

Official holders

☞For inquiries regarding the distribution list,
please fax to: Madeleine Dupuis (613) 957–3977

Integrated Information Management Services
Information Management
Information Management and Technologies
NHQ

July 1999

Government Publications

ENFORCEMENT AND CONTROL

EC
ENGLISH

TRANSMITTAL NO. 95–02

INSERT

Chapter EC-7 in its entirety

(ÉGALEMENT DISPONIBLE EN FRANÇAIS)

☞**For inquiries regarding distribution, please contact:**

Official holders	**(819) 997–0764**
Public subscribers	**(819) 956–4800**

LIBRARY
JAN 9 1996
University of Toronto

Document Management
Information Systems and Technologies
NHQ

October 1995

Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

https://archive.org/details/31761117667501

Government Publications

ENFORCEMENT AND CONTROL

EC
ENGLISH

TRANSMITTAL NO. 95–01

REMOVE	INSERT
From Chapter EC–6 Abbreviations page ii, Table of content, pages v and vi, text pages 39 to 42 dated 03–94.	**In Chapter EC–6** Abbreviations page ii, Table of content, pages v and vi, text pages 39 to 42–1 from different dates.

(ÉGALEMENT DISPONIBLE EN FRANÇAIS)

☞**For inquiries regarding distribution, please contact:**

Official holders	**(819) 997–0764**
Public subscribers	**(819) 956–4800**

LIBRARY
SEP 19 1995
University of Toronto

Document Management
Program & Work Processes
Information Systems and Technologies
NHQ

June 1995

Government
Publications

TRANSMITTAL NO. 94–02

DELETE	INSERT
From Chapter EC–2 Table of contents, pages iii and iv, text pages 21 to 24, dated 05-93.	**In Chapter EC–2** Table of contents, pages iii and iv, text pages 21 to 24–1, from different dates.
From Chapter EC–3 Text pages 7 and 8, dated 05-93.	**In Chapter EC–3** Text pages 7 and 8, dated 09-94.
From Chapter EC–8 Table of contents, pages iii and iv, text pages 5 to 10, dated 12-93.	**In Chapter EC–8** Table of contents, pages iii and iv, text pages 5 to 10, Appendix H, from different dates.

(ÉGALEMENT DISPONIBLE EN FRANÇAIS)

☞**For inquiries regarding distribution, please contact:**

Official holders	**(819) 997–0764**
Public subscribers	**(819) 956–4800**

LIBRARY
1994
University of Toronto

Editing & Publishing
Program and Work Processes Directorate
Information Systems and Technologies Branch
NHQ

September 1994

TRANSMITTAL NO. 94–01

These chapters replace Chapters IE-10 and IE-14.



INSERT

Chapter EC-1 in its entirety
Chapter EC-6 in its entirety

(ÉGALEMENT DISPONIBLE EN FRANÇAIS)

☞For inquiries regarding distribution, please contact:

Official holders	**(819) 997–0764**
Public subscribers	**(819) 956–4800**

Editing & Publishing
Immigration Information Centre
Immigration Support Services
NHQ

May 1994

IMMIGRATION

Canada

Chapter EC 1
Investigations, Arrest and Detention



Citizenship and Immigration Canada
Citoyenneté et Immigration Canada

Investigations, Arrest and Detention

Abbreviations and Short Forms	
Act	*Immigration Act*, as amended
Charter	*Canadian Charter of Rights and Freedoms*
CIC	Canada Immigration Centre
Convention	United Nations 1951 *Convention Relating to the Status of Refugees* and 1967 *Protocol Relating to the Status of Refugees*
CPIC	Canadian Police Information Centre
CPO	Case Presenting Officer
CRDD	Convention Refugee Determination Division of the Immigration and Refugee Board
Criminal Code	*An Act Respecting the Criminal Law*, R.S.C. 1985, c. C–46, as amended
FOSS	Field Operational Support System
IAD	Immigration Appeal Division of the Immigration and Refugee Board
IO	Immigration Officer
Minister	Minister of Employment and Immigration
POE	Port of Entry
SIO	Senior Immigration Officer

1. INTRODUCTION 1
1.1 What this chapter is about 1
1.2 Policy intent 1

2. ELEMENTS OF AN INVESTIGATION 2

3. PLANNING AN INVESTIGATION 3
3.1 The investigation function 3
3.2 What is an investigation? 3
3.3 Identifying and defining the violation 4
3.4 Locating the person in violation of the legislation 4
3.5 Actions 4
3.6 Setting priorities 5
3.7 Strategy 5
3.8 Police liaison 5
3.8.1. The RCMP 6
3.8.2. Provincial police 6
3.8.3. Municipal police 6
3.8.4. Police assistance 7
3.8.5. Canadian Police Information Centre 8
3.8.6. Liaison with the RCMP and CSIS on queries related to criminals 8

4. THE POWERS OF AN IO 9
4.1 Powers and obligations 9
4.2 Authority as peace officers 10
4.3 Safety and security of IOs 10
4.4 Protection of IOs acting under the authority of the Criminal Code 11
4.4.1. Use of force 11
4.4.2. False arrest 11

5. INTERVIEWING 13
5.1 Questioning 13
5.1.1. Interviewing techniques 13
5.1.2. Questioning on private premises 13
5.2 Counselling to leave Canada 14
5.2.1. Leaving Canada before an inquiry 14
5.2.2. Right to an inquiry before an adjudicator 14
5.3 Determining citizenship 14

6. THE IMMIGRATION OFFICER'S NOTEBOOK AND TAKING NOTES 16
6.1 Description of the Immigration Officer's Notebook 16
6.2 Notebook security 17
6.3 General rules for note–taking 17
6.4 Note format 17
6.5 Using the notebook at inquiry, court or other legal proceedings 18
6.6 Privacy Act and Access to Information Act 19

7. ARRESTS 20
7.1 Arrest with and without a warrant 20
7.2 Responsibilities under the Criminal Code 20

7.3 Reasonable grounds 21
7.4 Standard arrest procedures 21
7.5 Arresting a person on private premises 22
7.6 Pursuit across the Canada–U.S. border 22
7.7 Fingerprinting and photographing 23
7.8 Physical description 23
7.9 Restraining devices 23
7.10 Retaking a person into custody 23
7.11 Arrest for inquiry and determination 23

8. SEARCHES AND SEIZURE 25
8.1 Reasons for a search 25
8.2 Searching a person 25
8.3 Violent behaviour 25
8.4 Searching private premises 25
8.5 Securing a travel document on private premises 26
8.6 Seizing documents 26

9. PREPARING A27 REPORTS 28
9.1 Legal requirements 28
9.2 Narrative memorandum 28
9.3 Persons who elude examination under A27(2)(f) 29
9.4 Contraventions Act 29
9.5 Information exchange with other EIC programs 30

10. SPECIAL TREATMENT OF UNACCOMPANIED MINORS 31
10.1 Referring minors for review 31
10.2 Arrest and detention of minors 31
10.3 Unaccompanied minors and the inquiry process 31
10.4 Young offenders 31

11. ENTRY OF DIPLOMATS, CONSULAR OFFICERS, AND REPRESENTATIVES OR OFFICIALS OF A FOREIGN COUNTRY, OF THE UNITED NATIONS AND OF INTERNATIONAL ORGANIZATIONS 33
11.1 First entry to Canada 33
11.2 Visa requirements 33
11.3 Honorary consuls 33
11.4 Dependants 34
11.5 Reciprocal agreements with sending states on employment 34
11.6 Violations of the Act and its regulations 34
11.7 Forwarding information to National Headquarters 35

12. DETENTION 36
12.1 Grounds for detention 36
12.2 Rights of detainees 36
12.3 Destitution and indigence 36
12.4 Potentially violent detainees 37
12.5 Holding detainees at CICs 37
12.6 Detention in areas with leased facilities 37
12.7 Federal and provincial institutions 37

12.8 Reasonable arguments for continued detention 37

13. DETENTION REVIEWS 39
13.1 Investigations following an A103.1(1) review by an SIO 39
13.2 Monthly detention monitoring report 40

14. TESTIFYING 42
14.1 Preparation 42
14.2 Format for presenting evidence 42
14.3 Conduct as a witness 42

15. ALLEGED WAR CRIMINALS 44

16. INTERVENTION, CESSATION AND VACATION 45
16.1 Intervention 45
16.2 Cessation of Convention refugee status 46
16.3 Vacation and reconsideration hearings 47

17. REQUESTING THE MINISTER'S OPINION UNDER A46.01 AND REQUESTING CERTIFICATES UNDER A40(1), A40.1 AND A82 48

APPENDIX A
SAMPLE OF FORM MCC 3–58 (92–05) – APPLICATION FOR SEARCH OF CITIZENSHIP RECORDS 51

APPENDIX B
SAMPLE OF IMM 705 (1–85) B – CITIZENSHIP REGISTRATION AND PROMOTION 53

APPENDIX C
SAMPLE OF IMM 420 (05–93) B – WARRANT FOR ARREST 55

APPENDIX D
SAMPLE OF IMM 0689 (9–93) B – NOTICE OF RIGHTS CONFERRED BY THE VIENNA CONVENTION AND TO THE RIGHT TO BE REPRESENTED BY COUNSEL AT AN IMMIGRATION INQUIRY 57

APPENDIX E
SAMPLE OF IMM 1285 (7–93) B – NOTICE OF ARREST UNDER SECTION 103 OF THE IMMIGRATION ACT 59

APPENDIX F
FRAUDULENT DOCUMENTS 61
1. Terminology 61
2. Disposing of fraudulent documents 61

APPENDIX G
SAMPLE OF IMM 5041 (11–90) B – PROPERTY RECEIPT 63

APPENDIX H
SAMPLE IMM 1241 (11–88) B – REPORT UNDER SECTION 27 OF THE IMMIGRATION ACT **65**

APPENDIX I
OPERATING A CIC HOLDING ROOM **67**

APPENDIX J
STANDARD OPERATING PRINCIPLES FOR DETENTION CENTRES **69**

1. DUTIES OF SECURITY STAFF 69
   - 1.1 Training 69
   - 1.2 Handling disruptive behaviour 69
2. Rights and behaviour of detainees 70
3. Accommodation requirements 70
   - 3.1 Meals 70
   - 3.2 Exercise 70
   - 3.3 Room configuration 71
   - 3.4 Access to counsel 71
   - 3.5 Access to religious representatives 71
   - 3.6 Privacy 71
   - 3.7 Telephones 71
   - 3.8 Reading material 71
   - 3.9 Ventilation 71
4. Medical care 71
   - 4.1 Admission to a holding centre 72
   - 4.2 Treating illness or injury and dispensing drugs 72
   - 4.3 Special services 72
5. Language considerations 72
6. Immigration holding centres and offices of jurisdiction 73

APPENDIX K
FEDERAL AND PROVINCIAL INSTITUTIONS **75**

1. Newfoundland Region 75
2. Nova Scotia Region 75
3. Prince Edward Island Region 75
4. New Brunswick Region 76
5. Québec Region 76
6. Ontario Region 78
7. Manitoba Region 81
8. Saskatchewan Region 81
9. Alberta and Northwest Territories Region 82
10. British Columbia and Yukon Region 83

APPENDIX L
DETENTION RELEASE INFORMATION FOR SIOS **85**

1. An SIO's authority to release from detention 85
2. Acceptable conditions of release 85

APPENDIX M
SAMPLE OF IMM 654 (02–90) B – MONTHLY DETENTION MONITORING REPORT **87**

APPENDIX N
SAMPLE OF IMM 1457 (04–88) B – LOG – ALLEGED WAR CRIMINALS 89

APPENDIX O
SAMPLE OF IMM 5026 (04–93) B – MEAL AUTHORIZATION 91

APPENDIX P
SAMPLE OF IMM 5023 (12–88) B – AUTHORITY TO
RELEASE FROM DETENTION 93

APPENDIX Q
SAMPLE OF IMM 1439 (10–88) B – RELEASE HEARING 95

1. INTRODUCTION

1.1 What this chapter is about

This chapter describes how to investigate, arrest and detain persons who violate the *Immigration Act* and its regulations. As an investigator you identify, locate and formally report violators, and arrest and detain violators who pose a danger to the public or who would not be likely to appear for examination, determination, inquiry or removal.

1.2 Policy intent

The Canadian immigration policy aims for investigations, arrest and detention are:

- to maintain and guarantee public order, health and security in Canada, and
- to promote international order and justice by denying the use of Canadian territory to persons who are likely to engage in criminal activity.

2. ELEMENTS OF AN INVESTIGATION

Your basic aims as an investigator are:

- **to determine violations** of the Act and its regulations, by understanding the Act and its regulations, and how to plan an investigation
- **to locate the person** who has violated the legislation and regulations, by understanding your powers as an immigration officer (IO) and as a peace officer, and
- **to take appropriate action** by gathering the necessary information, preparing and submitting a report, and assisting the case presenting officer (CPO), as required.

This chapter focuses on your responsibilities once you have reasonable and probable grounds to believe that a person is in violation of the Act or its regulations.

3. PLANNING AN INVESTIGATION

3.1 The investigation function

Investigations involve some of the most complex activities that you perform as an IO. You are constantly on public display, working with the intricacies of various Acts of Parliament and common–law jurisprudence, and with the strictest possible respect for human rights and freedoms. You are frequently called on to make correct decisions quickly and independently, and in a professional and courteous manner, while maintaining your own physical safety and that of clients and the general public.

The Act is silent on the actual activity of investigation. The position of investigator has evolved from certain authorities that the Act provides to IOs and Senior Immigration Officers (SIOs) for arrest, detention, reporting and removal.

Some Canada Immigration Centres (CICs) need full–time permanent investigators. In other offices, where the volume of enforcement cases is less and there are correspondingly fewer officers, the work of the investigator is often combined with counselling duties. In both situations you must be aware of your responsibilities, powers, authorities, and the limits on your powers as a peace officer performing immigration duties.

The department's enforcement activities are both proactive, in preventing violations of the Act and regulations, and reactive, in recognizing the constraints on a civilian organization with enforcement duties. Your investigations must be based on sound research and analysis and local objectives and strategies, supported by good intelligence and information, specialized contacts, excellent police liaison, and community awareness, understanding and support. These, in turn, help deter violations in the community.

3.2 What is an investigation?

Investigation is a necessary precondition to the Act's provisions for arrest, detention, report–writing, removal and prosecution. It also applies to case preparation and case presentation, which are not covered in the legislation. Investigations may take different forms, from telephone calls to knocking on doors, but all investigations have a common intent: gathering information to enforce the Act and its regulations.

Supervisors of investigative units, and managers in CICs and regional headquarters, are responsible for establishing investigative goals. With these in mind, as an investigator you respond to information that comes to your attention, or is a result of your own efforts, to carry out your basic responsibilities:

- to investigate, identify, locate and formally report persons who appear to be in violation of the Act and its regulations
- to arrest and detain persons alleged to have violated the Act and who are believed to pose a danger to the public or who would not likely appear for examination, inquiry or removal
- to develop and maintain contacts with, and provide technical service, guidance and training to enforcement agencies, the courts, government and non–government agencies to promote the effective and efficient application of the Act and the immigration program

- to identify, collect, analyze and disseminate information from a variety of sources concerning illegal immigration, rackets, terrorism, espionage and subversive organizations, and
- to carry out your duties safely and securely.

3.3 Identifying and defining the violation

To determine whether a violation has been committed, you must understand the relevant portions of the Act, especially A27 and the other sections under which proceedings may be instituted.

> ***Note:*** *References to the Immigration Act, as amended, appear in the text in this chapter with an "A" prefix followed by the section number, as here: the Act, section 27.*

A violator may confess after you have located him or her, or your examination of the file or documents may define the violation.

Because the person concerned may not readily admit to the offence, you must be skilled in questioning techniques to uncover the facts. The subject of an investigation is not required to answer questions, and you cannot arrest a person solely to answer questions. You must be able to interview quickly and efficiently, often under difficult conditions, such as in the person's home with other persons in attendance, or at a place of employment.

3.4 Locating the person in violation of the legislation

To locate a person who has violated the Act, standard techniques include:

- examining information such as files and complaints
- using investigative sources such as computer systems, telephone directories, and other government departments, and
- contacting the person's co–workers, neighbours, friends, relatives, employers, and former employers by telephone or personal visits.

You should have a good knowledge of legislation such as the *Access to Information Act* that will help you to decide what type of information is accessible. You should also have a basic understanding of cross–cultural practices because of the varied customs and lifestyles you will encounter. Use your judgement and analysis to determine the value of contacts.

For further information on gathering information, see chapter II of the *Investigator's Guide*.

3.5 Actions

After you have identified the offence and located the violator,

the next steps in an investigation are to prepare and submit a report, and to assist the CPO, as required.

If you believe that the person concerned is described in A27(l) or A27(2), you must submit a report. Record all pertinent details on the case file to assist the CPO, should the case go to inquiry.

Appropriate action may include arrest without warrant, or recommending that an SIO arrest with a warrant. If you decide to arrest, you must also decide whether to proceed without police assistance. Assess the conditions and the person's behaviour before determining that you need help.

3.6 Setting priorities

An investigation should never be arbitrary. Instead it is a response to information and circumstances that give rise to your knowing about, or at least having a reasonable suspicion of, a contravention of the Act or its regulations.

When you are establishing your list of priorities in a case, consider these factors:

- the gravity of the alleged infraction. You should categorize the seriousness of the violation: for example, the sections of the Act involving criminality are more serious than a simple overstay.
- the source of your information. With experience, you will be able to distinguish reliable sources from unreliable ones. You should develop reliable contacts, and use other reputable sources such as CICs, police agencies, and government departments and agencies.
- the quality of your information. You may get excellent information that will help you in the speedy investigation of violations. Occasionally the quality of your information may influence you to devote more time to pursuing further evidence of violations.

3.7 Strategy

You must be able to determine how you can use your information to attain the overall objectives of the immigration program. For example, if "danger to public health" violations are a high priority, this should influence the priority that you place on information.

In planning an investigations strategy, your manager must be aware of local and national trends. For example, a study of persons in Canada illegally (for mainly non–criminal reasons) found that approximately 55% of them were working without authorization. In this case a clear national objective should be incorporated into your local objectives, because one of our principal obligations is to reduce the number of persons who are working without authorization. You could then plan organized visits to employers who have a record of hiring illegal workers, to verify that they are respecting the rules for hiring non–residents, and to find those who are hiring persons not authorized to work.

Your manager should develop quantitative measurement and analysis of problem areas in enforcement and control. These steps are directly related to a preventive and deterrent approach, and help to identify areas of concern for increasing community awareness.

3.8 Police liaison

The underlying stance of the enforcement program is proactive. Your manager should encourage your CIC's active role in community law enforcement by promoting police liaison, and by developing training and education programs to increase the awareness of the police, other government agencies, and the public.

During the normal course of your work, you may require help from one or more police organizations, depending on your CIC's location and the jurisdiction of a situation. The jurisdiction of the various police forces varies according to the legislation for which they are responsible, such as customs officers, fisheries officers, and military and railway police. You will most often liaise with the RCMP and provincial and municipal police.

3.8.1. The RCMP

As Canada's federal police organization, the RCMP operates in all provinces to enforce those federal statutes for which it has policing responsibility. Some of the statutes relating to our work and enforced by the RCMP are the *Immigration Act*, the *Narcotic Control Act*, the *Customs Act*, the *Excise Act* and the *Food and Drug Act*. An RCMP officer has the powers of a peace officer and of a customs officer for the whole of Canada. The RCMP is the only police force with such authority.

The RCMP provides provincial and municipal police services to eight provinces, Yukon, the Northwest Territories and various municipalities.

In 1984 the Canada Employment and Immigration Commission and the RCMP signed a Memorandum of Understanding on investigations and prosecutions conducted under the Act. Without restricting our own investigations, the RCMP may investigate and prosecute offences listed in A94 to A100 without the prior concurrence of the department, as long as consultations take place as soon as possible when it appears that unfavourable public reaction will develop, or when it appears that an immigration employee may have committed an offence under the Act. In cases of media interest the RCMP regional officer in charge of the immigration and passport section consults a regionally designated IO.

The RCMP must notify immigration authorities about all immigration investigations and prosecutions that the RCMP starts. The *Privacy Act* allows an RCMP officer conducting an immigration investigation access to immigration case files and to copies of official documents from immigration records. The RCMP and immigration authorities may agree to joint action in investigating organized violations of the Act. Immigration authorities must refer offences under the Act to the RCMP for investigation and possible prosecution. Immigration authorities must also notify the RCMP before removing persons with serious criminal records or outstanding charges against them.

The RCMP will obtain for immigration authorities Canadian and foreign (but not U.S.) criminal records, and information for an IO's assessment of the inadmissibility of persons. The Canadian Police Information Centre provides information concerning persons under immigration investigation or warrant, and the RCMP will help immigration officials in their dealings with violent and dangerous persons during an investigation, arrest or removal.

3.8.2. Provincial police

Ontario and Québec are the only two provinces in Canada that have their own provincial forces: the Ontario Provincial Police and the Sûreté du Québec. Both forces are responsible for enforcing the federal and provincial statutes in their respective provinces, and municipal by–laws where the provincial force is contracted to provide municipal police services.

3.8.3. Municipal police

Each city and town is responsible for maintaining law and order within its jurisdiction, and for providing and maintaining an adequate police force in accordance with the needs of the community. Larger communities usually have municipal police, and new or smaller communities may rely on contracts with the provincial police or the RCMP. Immigration management encourages you to establish liaison with municipal police forces.

3.8.4. Police assistance

IOs depend on various police agencies for certain types of assistance:

- to provide security in a geographical area by their presence or regular patrols
- to participate in investigations
- to assist in dangerous situations, such as those in which assaults or any other potentially violent incidents may occur
- to provide protection in case of disturbances such as demonstrations
- to lay charges under the Act
- to provide assistance to escorts
- to provide fingerprinting and photographic expertise
- to provide Canadian Police Information Centre (CPIC) information where it is not available in CICs
- to provide lab analysis of suspected fraudulent passports and other documents
- to refer cases of convictions under federal statutes to the department [A27], and
- to transport detainees to detention centres or jails when necessary.

The assistance and co–operation that the department receives from the police is a function of the our comportment and attitude. You have an obligation to contribute to and maintain healthy working relationships with the various agencies.

You do not participate in police raids that are conducted solely for police reasons, except where you are asked to assist as a resource person if the police suspect that there may be immigration violations. Your local manager is responsible for assessing the appropriateness of any immigration participation in police activities, and the possible consequences for the integrity of the immigration program.

You should help to maintain the department's credibility with police forces. For example, when the police execute immigration warrants, you should respond promptly and in a manner that acknowledges the police efforts in locating persons of interest to immigration officials. Telephone instructions to the police officer may suffice in exceptional circumstances, but normally a personal response is more appropriate.

If you suspect that danger may arise from a planned investigation, a police officer should accompany you. If police assistance will be delayed, postpone the investigation until a time when a police officer can accompany you. You must never place yourself in a position of danger.

To take best advantage of available police support, your office must be familiar with the nature and level of services that the police in your community are able to provide, and determine the local procedures for using those services.

It is the department's policy to co–operate with law enforcement agencies whenever possible, particularly when co–operation may in the longer term help in preventing serious crime. From time to time you may be approached by officials of law enforcement agencies with a request to assist the agency in an investigation, such as a request for deferring enforcement action, granting an extension of status, or issuing a permit so that the agency can continue surveillance or otherwise continue to obtain

information from the person concerned. If you are approached, you must bring the request to the attention of your CIC manager. You must not enter into secret arrangements with police officials without the approval of senior managers. Any assistance that you give must be strictly in accordance with the Act.

Regional officials should inform the Director General, Enforcement Branch, of any case that may become publicly contentious.

3.8.5. Canadian Police Information Centre

The CPIC system stores a variety of valuable information of interest to enforcement agencies in Canada. It can provide you with data on the location of subjects, immigration warrants, assessments of danger and character profiles.

When you locate a person or receive information that substantiates the cancellation of a warrant, you must

promptly remove the warrant from the CPIC system. For further information, see chapter IC 4.10 and IC 4.27.

3.8.6. Liaison with the RCMP and CSIS on queries related to criminals

You may want to conduct a criminal–related query in a country other than the United States. You may want to confirm, for example, the presence abroad of a person wanted in Canada or to ascertain the existence of, or obtain a copy of a criminal record. If so, send your query to the address indicated in APPENDIX A of chapter IC 1. If available, you should also send the Fingerprint System (FPS) numbers.

You may maintain direct liaison with members of United States police agencies. If you need criminal documents on a person in Canada, and you are aware of the location in the USA where the person was convicted, your office should directly contact the police agency concerned. All information exchanged must be lawful and in accordance with the *Privacy Act* and the *Access to Information Act*.

4. THE POWERS OF AN IO

4.1 Powers and obligations

The Act confers certain powers related to enforcement on all IOs, including investigators:

A27	the obligation to make a written, detailed report to the Deputy Minister or delegate when a person has contravened the Act
A90	the power to board vehicles bringing persons to Canada, to examine any person or document, and to seize and detain a vehicle until the examination has been completed
A103(1), A103(2)	if the officer believes that the person poses a danger to the public or would not appear for examination, determination, inquiry or removal, the power to arrest with or without a warrant a person who has contravened the Act
A103(3), A103(8)	the powers of detention and release of adjudicators and SIOs
A104	the power to retake into custody and hold in detention a person who has violated the conditions of release imposed under the Act
A105	the power to take into custody a person who has become an inmate of an institution under a court order, at the expiration of the term of confinement
A106	the power to confer upon the recipient of a warrant or order the officer's own powers of arrest and detention under the Act
A110(1)	the authority and powers of a peace officer to enforce any provision of the Act, the regulations, or any warrant, order or direction made under the Act or the regulations
A110(2)(a)	the authority to require persons who are seeking admission, making an application under A9(l), A10, A10.2(1) or A16, arrested under A103, subject to a removal order or conditional removal order, or claiming to be Convention refugees, to comply with regulations providing for their identification
A110(2)(b)	the authority to seize and hold any travel document required to carry out any provision of the Act and its regulations
A110(2)(c)	the authority to seize and hold any travel document if the IO believes that it was fraudulently or improperly obtained or used, or will be fraudulently or improperly used
A110(3)	the authority to employ temporary assistants as deemed necessary to enable the IO to carry out his or her duties under the Act and the regulations, and
A111	the authority to administer oaths and to receive evidence on any matter arising in connection with the Act.

4.2 Authority as peace officers

Section 2 of the *Criminal Code* defines "peace officer" as "a police officer, police constable, bailiff, constable or other person employed for the preservation and maintenance of the public peace for the service or execution of civil process". The true status of officers whose title is mentioned in s. 129 of the *Criminal Code*, and hence the exact powers that they may exercise, depend upon eventual judicial interpretations.

Although the definition of a peace officer in the *Criminal Code* does not specifically mention immigration officers, there are a number of legal precedents in which the definition was interpreted to include public officials, such as immigration officials, performing their duties. Convictions for assaulting a peace officer have been obtained in cases involving IOs. This does not mean that IOs are peace officers in the same sense as police officers: that is, enforcers of the *Criminal Code*. Although full protection of IOs as peace officers is accorded under the law, the powers and authority of IOs as peace officers have been limited under A110 to the enforcement of the provisions of the *Immigration Act* and the *Immigration Regulations*, and to orders or directions made under the Act and its regulations, respecting the arrest, detention or removal from Canada of any persons.

Section 25 of the *Criminal Code* provides protection for IOs performing the functions they are authorized to perform by law — that is, functions relating to the arrest, detention or removal from Canada of any person — provided the officers are acting in good faith and on reasonable grounds. Although the *Criminal Code* permits IOs to carry weapons, the department's policy is that under no circumstances are officers to be in possession of firearms while on duty.

4.3 Safety and security of IOs

Immigration officers are entrusted with some duties performed by police officers, such as arrest and detention. These and other duties are potentially dangerous to the officer's personal safety. To minimize risk you must use the approved safety equipment that immigration management has given you. You are not obliged to perform your duties in a situation where you determine that a threat to your safety exists.

It has been and shall continue to be departmental policy that officers must withdraw from a dangerous or potentially dangerous situation, and must rely on the support of police forces in such situations. You have the discretion to withdraw from such a situation, and will not receive criticism for not executing your duty.

It is in your best interests to reduce risk by being well–equipped. For example, you should be appropriately trained in investigative techniques such as interviewing, questioning, search, arrest, and defusing confrontations.

Officers who are experienced in resolving encounters with difficult persons develop greater confidence in their approach to situations. Officers who have an extensive knowledge of relevant legislation and are fully aware of locally approved procedures will have the advantage of added confidence in approaching the task at hand.

There are steps that every officer must take when completing an A27 report on a person who exhibits violent or unstable behaviour:

- clearly document on case files any difficulties experienced with the person, and especially any available history of the person's behaviour. This will assist the CPO, who must be aware of inherent risks in arranging a safe inquiry setting.
- do not bring such a person to the CIC if you can make alternative arrangements at detention centres or other institutions.

4.4 Protection of IOs acting under the authority of the *Criminal Code*

The *Criminal Code* offers certain protection to officers who are performing activities respecting the arrest, detention and removal from Canada of any person.

Officers who overstep their authority are open to civil or criminal proceedings against themselves or the department. The Courts have consistently found immigration proceedings to be of a civil and not criminal nature, and expect a high standard of behaviour from IOs. As long as you are acting in good faith, have reasonable grounds for your actions and do not go beyond the limit of your legal authority, you will have the full support of your management.

4.4.1. Use of force

Section 25(1) of the *Criminal Code* provides that a peace officer is justified in using force only if the officer:

- is in the lawful execution of his or her duty
- acts on reasonable grounds, and
- uses only as much force as is necessary.

Under s. 25(2) of the *Criminal Code* a peace officer is justified in executing a warrant, notwithstanding that the warrant is defective, if the officer:

- is in the lawful execution of his or her duty, and
- acts in good faith.

Under s. 25(4) a peace officer is justified in using as much force as is necessary to prevent the escape of a person the officer is attempting to arrest if the officer:

- is in the lawful execution of his or her duty, and
- cannot prevent the escape by reasonable means in a less violent manner.

Section 26 provides that everyone who is authorized by law to use force is criminally responsible for any excessive use of force according to the nature and quality of the act that constitutes the excess.

4.4.2. False arrest

Section 28(1) of the *Criminal Code* provides that a peace officer is protected from criminal responsibility in the arrest of a wrong person if the officer:

- is authorized to execute the warrant
- acts on reasonable grounds, and
- acts in good faith that the person he or she arrests is the person named on the warrant.

Section 28(2) states:

> (2) Where a person is authorized to execute a warrant to arrest,
>
> (a) every one who, being called on to assist him, believes that the person in whose arrest he is called on to assist is the person named in the warrant, and
>
> (b) every keeper of a prison who is required to receive and detain a person who he believes has been arrested under the warrant,
>
> is protected from criminal responsibility in respect thereof to the same extent as if that person were the person named in the warrant.

Under s. 37(1), everyone is justified in using force to defend himself, herself or anyone under his or her protection from assault, if he or she uses no more force than is necessary to prevent the assault or the repetition of it.

In other words, you must have reasonable grounds to justify any use of force when performing your duties, and you should keep force to a minimum. As long as you are able to justify your actions in accordance with the provisions of the *Criminal Code*, these actions will be supported.

While the *Criminal Code* confers protection from criminal charges should false arrest occur, you may nevertheless be open to civil suit. You must take every possible precaution to prevent such an occurrence.

5. INTERVIEWING

Interviewing is a basic investigative technique for getting necessary information about a possible offender, either from the person directly or from a third person.

5.1 Questioning

The Act requires persons to answer truthfully all questions asked by an IO at an examination [A12(4)]; A94(1)(g), A94(1)(h) and A94(1)(h.1) provide penalties for refusing to answer questions or making false or misleading statements at an examination or inquiry.

There is nothing in the Act to compel a person who is being investigated to answer questions, nor can you arrest a person merely for questioning. Refusing to answer questions is not in itself reasonable grounds for arrest. You must never attempt to secure answers to questions by a promise of favours or through threats or coercion. If a person refuses to answer questions about his or her status, but you have reasonable grounds to believe that he or she is arrestable under A103(2), then you may arrest the person without warrant for inquiry, determination or removal from Canada.

5.1.1. Interviewing techniques

Investigators develop their own preferred style of asking questions during an interview. When you are deciding on your strategy, you should keep in mind the kind of information that you want to elicit from the person. The information may be specific (such as the date of coming to Canada, the person's current address, and so forth) or an elaboration or description of events (how the person improperly obtained a Social Insurance Number card, for example).

You should plan the actual phrases you will use in posing questions, and the way you are going to ask them, including the tone of your voice and your body language. How you ask a question can create a climate for different kinds of responses. Examples of different kinds of questions include:

- closed: *Do you have a valid passport?*
- open–ended: *Why didn't you leave Canada when your permit expired?*
- leading: *You knew you were not allowed to work in Canada, didn't you?*
- rephrasing: *You were advised to report to an immigration office?*
- recapping: *So far you've stated that...?*
- clarifying: *I'm not sure I understand...?*

In assessing the person's response, you should become familiar with various signs or body language and what they can mean: the way the person sits, stands, holds his or her hands, and so on. You should consider all these signs together, not individually, because any gesture could be meaningful.

5.1.2. Questioning on private premises

Investigators often receive information concerning a person who has allegedly violated the Act and who is residing at a particular address. Generally there is insufficient additional information — such as the person's correct name, status and background — for issuing a warrant.

If you want to question a person on private premises to clarify the status of the alleged violator, you can only enter the premises by consent of the occupant. If the occupant asks you to leave, you must do so. Otherwise your presence becomes a trespass.

5.2 Counselling to leave Canada

5.2.1. Leaving Canada before an inquiry

There appears to be nothing unlawful in an IO's advising a person who is in breach of the Act that the person may leave Canada before a direction for inquiry has been issued. Once an inquiry has been directed, however, an IO may be in contravention of A97(1) if the IO counsels a person to leave the country and thereby elude inquiry.

5.2.2. Right to an inquiry before an adjudicator

A person who is deemed to have violated the Act, other than a person described in A27(2)(e) by A26(1)(c) or 27(2)(f), 27(2)(h) and 27(2)(k), and not described in any other section of A27(2), has the right to an inquiry before an adjudicator, and an IO should not counsel the person to leave and forgo this right. If the person indicates a wish to leave voluntarily, and if the inquiry does not involve a serious ground for removal, the officer should not object if the person arranges his or her departure. Once an inquiry has been convoked and the file is with Case Presentation, you should refer a person who wants to leave before inquiry to a CPO for a decision and confirmation of departure arrangements.

5.3 Determining citizenship

During an investigation, if you have reasonable doubts about a claim to Canadian citizenship by a person whom you are investigating, request a search of citizenship records by sending an Application for Search of Citizenship Records (form MCC 3–58; see APPENDIX A) to:

Citizenship Registration and Promotion
Multiculturalism and Citizenship Canada
P.O. Box 7000
Sydney, N.S. B1P 6V6
Tel.: 902–564–7800; 902–564–7801; 902–564–7802
Fax: 902–564–7667
Telex: SOS–SYD 019–35295

The Citizenship Registration and Promotion Branch will accept telephone, telex and fax requests only in very urgent cases: for example, if a person is under examination at a port of entry (POE) and waiting for a decision on admissibility. You must follow up an urgent request by a completed MCC 3–58 form. Copies of the form are available from:

Forms Liaison Officer
Citizenship Registration and Promotion
Multiculturalism and Citizenship Canada
Ottawa, Ontario K1A 1K5
Tel.: 819–994–2581

When you are investigating a permanent resident, you must send a completed Citizenship Registration and Promotion form (IMM 705; see APPENDIX B) to the Citizenship Registration and Promotion Branch in two specific cases:

- a permanent resident who has been or will be reported under A27(1), regardless of the length of time since landing, and
- a permanent resident who has been arrested or is undergoing trial for an indictable offence, but is not yet reported under A27(1).

After you have sent in an IMM 705 form, you must advise the Citizenship Registration and Promotion Branch of the final disposition of the case without delay. Send the information in a brief note attached to a photocopy of the original IMM 705 form, clearly marked *Follow–up*.

6. THE *IMMIGRATION OFFICER'S NOTEBOOK* AND TAKING NOTES

In keeping with your role as a peace officer, you are often involved in incidents that may result in an inquiry, court proceedings or providing general assistance to police officers. Your *Immigration Officer's Notebook* (form IMM 5104) is an essential investigational tool, and you will use it to refresh your memory at a later date: for example, when preparing accurate detailed reports or when forming a basis for testimony if you are called on to testify at inquiry or in court. As a representative of the department, you must use the notebook appropriately. This in turn will promote a professional and credible image.

The Enforcement Branch has developed the notebook, and it is consistent with the form preferred by the courts. The notebook also contains reference material in the back to assist you during the course of your duties.

Some situations in which you will use it are:

- at inquiry
- in court
- for A103 arrests
- on escort officer duties
- when a person eludes examination at a POE
- when a person makes false or misleading statements
- as a witness to an offence
- providing assistance to other departments
- assisting Revenue Canada Customs officers in search and seizure
- when a person assaults a peace officer
- when a person commits other offences
- testimony in the U.S. under the *Mutual Legal Assistance in Criminal Matters Act*, and
- handling complaints.

6.1 Description of the *Immigration Officer's Notebook*

The *Immigration Officer's Notebook* is divided into three sections:

- **the cover**: this section contains essential data that may be required during legal proceedings. You should always complete this data before making your first entry. For obvious reasons you cannot note the last entry date until the notebook is full or returned for storage.
- **blank pages**: this section consists of 100 numbered pages for note–taking. Each page has a left margin where you should note appropriate times and a page number in the bottom right. Do not exceed this number of entries.
- **reference pages**: this section contains the following information:
  - 10 signal codes for two–way radio usage

- frequently used telephone numbers
- phonetic alphabet
- *Canadian Charter of Rights and Freedoms* (the *Charter*)
- Vienna Convention
- caution and secondary caution to charged person
- description of person
- height–weight conversion tables
- Social Insurance Number (SIN) register
- reportable sections of the Act
- offences and punishment
- arrest and detention, and
- arrest without warrant under the *Criminal Code*.

6.2 Notebook security

Your notebook will contain personal and sensitive data, and you must give it the same security as other departmental information such as files. CICs must retain completed notebooks in the same secure fashion as files and for the same period of time as required by our file–retention policy. CICs may need to retain notebooks for an extended period because of lengthy court cases or notes concerning a continuing case file.

Officers leaving the department must turn in all completed or partially completed notebooks. This procedure mainly applies to summer students, term, seasonal and casual employees.

Managers and supervisors are responsible for reviewing officers' notebooks continually (National Headquarters suggests every three months). The officer conducting the review should note the time, date, review period and his or her initials on the line following the officer's last entry.

6.3 General rules for note–taking

You should observe the following general rules for taking notes:

- make all notes in your own handwriting and in pen. Try to use only one type of pen, preferably black. If you keep switching pens, someone could assume that you made additions long after the fact.
- try to leave large spaces between writings.
- keep cases separate.
- always relate information to its source: for example, *weather 6dC (newspaper)*
- clearly label your opinions as opinions.
- rule off the last line after each day.
- remember that notebook contents depend on the circumstances. Notes could simply include *time*, *day*, *date*, *weather*, *time on duty*, *lecture to police 52 div.*, and *time off duty*

6.4 Note format

The RCMP has suggested the rough note–complete note (RN–CN) format. This format allows you to make factual notes at the time and later write a detailed synopsis of the events. You should place the RN and CN abbreviations in the left margin to indicate the format clearly.

The general format is equally acceptable. A number of enforcement agencies use this format, which is basically a detailed factual synopsis of events. You should remember to be consistent in the format you choose.

The Investigator's Guide includes samples of both formats.

6.5 Using the notebook at inquiry, court or other legal proceedings

In court or at an inquiry you will be presenting your personal account of the events before, during and after an occurrence. Because it is virtually impossible for you to remember every detail accurately, the judge or adjudicator will have no objection to your refreshing your memory from notes that you made at the time of the occurrence. Introducing a notebook into a courtroom procedure is a privilege, and as a common courtesy before you consult your notes you should seek permission from the judge or adjudicator. You could ask, for example:

> *Your Honour* or *Madam adjudicator* or *Mr. adjudicator, may I refresh my memory from notes that I made at the time of the incident* or *investigation* or *arrest* or *detention* or *escort* or *report* or *occurrence?*

Once you use your notebook, your notes can be introduced as an exhibit and examined by the defence lawyer. The defence lawyer will be attempting to identify irrelevant material that can discredit your testimony or credibility.

Even if you do not use your notebook, a judge can request that you produce it. The judge decides whether to accept your notes as evidence. You should always refresh your memory before testifying.

For testimony, you should be aware of the following points:

- your notes should be clear, concise, legible, understandable, accurate, complete and sequential.
- be consistent in your note–taking: that is, always start each day the same way (for example: *time*, *day*, *date*, and *weather conditions*), and record information in the same manner (with names, for example: *last name*, *first given name*, *second given name*).
- lawyers often ask what the weather conditions were at the time of the occurrence to test your powers of recall.
- notes should contain only information that relates to work: that is, no personal information to avoid embarrassment or explanation.
- make your notes at the time of your observations, or as soon after as possible; the courts have held that the maximum time afterwards is 24 hours.
- all notes should be factual, not inferences or evaluative statements. You may, however, give your assessment of a situation supported by observations (for example: *Your Honour, in my opinion he appeared to be intoxicated by alcohol or a drug. This is based on the following observations I made at the time...*).
- collaboration to a certain extent between officers when you complete your final notes is perfectly acceptable. This avoids explaining under cross–examination any needless discrepancies between notebooks. You must not collaborate with other officers to alter facts or the sequence of events, because defence counsel may suggest that you collaborated to provide a single version of events.

- if you take a statement or record a question–and–answer interview in your notebook, the witness or the person directly involved should sign the statement or interview notes.
- note–taking during certain situations is not always possible, and can be dangerous if an individual becomes violent when you do not have your hands free to defend yourself.
- a recommended sequence for recording notes in a detailed chronological order is *who*, *what*, *where*, *when*, *why* and *how*.
- detailed notes are better than missing a key point.
- always prepare an unbiased, detailed account of events you have witnessed or received
- small diagrams are permissible provided that they are clear.
- you may use abbreviations, but they should be consistent to avoid confusion.
- you may use sections of the Act or *Criminal Code*, but make sure that they are accurate.
- always note whether dates, times or figures are exact or approximate.
- use all lines and do not skip pages.
- do not tear out or remove loose pages.
- do not use correction fluid, erase or scribble out mistakes. Draw a fine line through the note to be corrected, ensuring that you do not block out your original writing, and initial it.

Only the pages with information on the case can be produced or viewed in court. All other information is protected under the *Privacy Act* and *Access to Information Act*. To avoid a defence lawyer's attempting to flip through irrelevant pages, you should use paper clips. You could then say:

> *Your Honour* or *Madam adjudicator* or *Mr. adjudicator, I have marked the pages relevant to this case. The other pages clipped together contain information pertaining to other cases unrelated to this one, and are protected under the* Privacy Act *and the* Access to Information Act.

6.6 *Privacy Act* and *Access to Information Act*

Your official notebook (IMM 5014) is a record within the meaning of the *Access to Information Act*, and contains personal information within the meaning of the *Privacy Act*. The courts have determined that it is a record under the control of a government department, and that it is subject to the same exemptions under the *Access to Information Act* that apply in individual cases.

When you enter information in your notebook, you should remember that a request under the *Access to Information Act* to gain access to an individual's case file might also include your notebook. The possibility that information in your notebook may be disclosed should not discourage you from maintaining accurate, candid notes. If you follow all the general rules in this section 6, you should not be concerned if the contents of your notebook are released. Some information might be protected and not accessible, and access can be granted only to information concerning the individual making the request.

7. ARRESTS

7.1 Arrest with and without a warrant

The power to arrest and detain is a serious matter involving restraints on liberty and civil rights. You should consider arresting someone only after you have explored other alternatives and found them to be inappropriate.

Without a warrant, if you have reasonable grounds to believe that the person poses a danger to the public or would not appear for inquiry, determination or removal [A103(2)(a) and A103(2)(b)], you may arrest and detain in the following instances:

- for inquiry or for determination, a person who on reasonable grounds is suspected of being a person referred to in A27(2)(b), A27(2)(e), A27(2)(f), A27(2)(g), or A27(2)(h), or
- for removal, any person against whom a removal order has been issued.

An SIO may issue a Warrant for Arrest (form IMM 420; see APPENDIX C) and detention if, in the SIO's opinion, the person poses a danger to the public or would not otherwise appear for examination, inquiry or removal [A103(l)].

The mere words *You are under arrest* are sufficient to constitute an arrest in law, if the person acquiesces. In the absence of acquiescence or the person understanding, you must actually touch the person. Arrest necessarily connotes detention, but detention does not necessarily connote arrest (see chapter PE 8).

The standards for arrest without a warrant are no different from those for arrest with a warrant. You must clearly document your reasons for arrest, because you may be called upon at any time to justify the grounds on which you based your decision to arrest.

If you do not have reasonable grounds to believe that the person would not appear for inquiry or determination by an SIO, or that the person is a danger to the public, then call the person in to a CIC, and submit a report under A27.

7.2 Responsibilities under the *Criminal Code*

When you arrest someone, you are individually responsible for observing these procedures of the *Criminal Code*:

> 29.(1) It is the duty of every one who executes a process or warrant to have it with him, where it is feasible to do so, and to produce it when requested to do so.
>
> (2) It is the duty of every one who arrests a person, whether with or without a warrant, to give notice to that person, where it is feasible to do so, of
>
> (*a*) the process or warrant under which he makes the arrest; or
>
> (*b*) the reason for the arrest.
>
> (3) Failure to comply with subsection (1) or (2) does not of itself deprive a person who executes a process or warrant, or a person who makes an arrest, or those who assist them, of protection from criminal responsibility.

Although s. 29.(3) of the *Criminal Code* protects you in instances of non–compliance with ss. 29.(1) and 29.(2), the department expects you to comply with ss. 29.(1) and 29.(2) whenever possible.

7.3 Reasonable grounds

Before you make an arrest or request that a warrant be issued under A103(1) or A103(2), you must have more than a hunch or a mere suspicion that the person falls within one of the two grounds of A103: "poses a danger to the public or would not appear". If you believe that a person poses a danger to the public or would not appear, you must have reasonable grounds to make an arrest under A103(2) or request a warrant under A103(1).

Reasonable grounds are a set of facts and circumstances that would satisfy an ordinarily cautious and prudent person, and which are more than mere suspicion. The burden of proving reasonable grounds rests with you. A good rule of thumb is to ask yourself: *If I am challenged in court to demonstrate that I had reasonable grounds to suspect the person was one referred to in A103(2), would my reasons withstand the scrutiny of the court?*

In other words, you must have reasonable grounds to believe that the person is described in one or more specific paragraphs, and you must also have a basis for your opinion that the person poses a danger to the public or is unlikely to appear for inquiry, determination by an SIO or removal from Canada.

7.4 Standard arrest procedures

Arrest is the act of depriving a person of his or her freedom, and there is no way to predict the reaction of an individual faced with arrest. For further information on planning a safe arrest, see chapters I and III of the *Investigator's Guide*.

When you are making an arrest, you *must* take these steps:

- identify yourself as an immigration officer. Display your badge and identity card to the person.
- take physical custody of the person. If necessary, place your hand on the person's arm or shoulder. Take hold of the person.
- tell the person that he or she is under arrest, and inform him or her of the reasons for arrest and the right to counsel.
- inform the person of his or her right to contact the embassy or consular representative of his or her government, and advise the person of the nearest representative of his or her government. Use the Notice of Rights Conferred by the Vienna Convention and to the Right to Be Represented by Counsel at an Immigration Inquiry form (IMM 689; see APPENDIX D).
- search the person. You should conduct a search when you arrest or detain a person. Remove the person from spectators (such as co–workers), and conduct the search in a more private area, such as a locker room or office. For proper search procedures, please refer to chapter III (section 5) of the *Investigator's Guide*.

Section 10 of the *Canadian Charter of Rights and Freedoms* provides that everyone has the right on arrest or detention to be promptly informed of the reasons for the arrest or detention, and to be informed of the right to retain and instruct counsel, without delay. Inform the person that if he or she cannot afford legal counsel, access to free legal aid may be available to him or her, as indicated in the *Immigration Officer's Notebook*.

Form IMM 689 informs the person in writing of the right to counsel at an inquiry. You should complete this form and give it to the person concerned at the time of detention, or as soon as practicable.

You must make certain that the person fully understands why the arrest has taken place, and when the inquiry will be held. It is important that you take the time to explain what is happening to the person in a manner that he or she understands fully. Use terms that the person understands to explain the violations under the Act. If language is a barrier, take the person into a CIC and find an interpreter.

If the person chooses to retain and instruct counsel, you must provide a reasonable opportunity for the person to do so, if facilities are available. A reasonable opportunity usually means an opportunity for the person to make one or more telephone calls, or if counsel is present, to have an opportunity for consultation. You should grant the person privacy for making the phone call or consulting counsel. If counsel is unavailable, you have not denied the right to retain and instruct counsel. It is sufficient for you to allow the person to consult counsel by telephone, although this may vary depending on the case.

If you take these steps with due diligence, arrests that you make will not violate s. 10 of the *Charter*.

7.5 Arresting a person on private premises

You may enter private premises to perform an arrest if the occupant grants consent. The courts have ruled that there is no unrestricted right for a peace officer to enter a private dwelling in search of a fugitive.

In civil matters such as arrests under the Act, it is not clear whether you have the legal authority to enter if the door is barred. If the door is not barred, you may enter, but if the dwelling is that of a third party and the person you are seeking is not present, then you may be found guilty of trespass. If you have any doubt about the legality of entering a house if the door is barred, it is recommended that you should not enter.

It is the department's policy that you must not force entry to private premises to make an arrest. As well as the legal risk involved, the possibility exists that forced entry may be met with physical resistance. You should ask for police help if you are exercising a warrant, you are certain that the person you are looking for is inside, and you are denied entry. In some instances the presence of a uniformed police officer may help you to get permission from the occupants to open the door.

7.6 Pursuit across the Canada–U.S. border

Pursuing a person across the Canada–U.S. international boundary by law enforcement officers of either country is a contravention of international law.

You should report any incidents through your Regional Director or Director General, Immigration to the Director General, Enforcement Branch, who will inform External Affairs and International Trade Canada of the situation.

7.7 Fingerprinting and photographing

Section 44 of the *Immigration Regulations* (based on A110(2)) provides your authority to take the fingerprints and photograph of a person arrested under A103. Although you may use any police force to take fingerprints or photographs, you must submit the fingerprints or photographs to the RCMP to determine the person's identity.

All refugee claimants will be fingerprinted using a C–216 form. This form will be used for identity purposes, for those who are suspected of having a criminal record or for those who are facing charges under the Act. All other persons who are fingerprinted for immigration purposes will be fingerprinted using a C–216C form. Mail completed C–216 forms promptly to:

Commissioner RCMP
Att: O.I.C. I&P Branch
Ottawa, Ontario
K1A OR2

Mail completed C–216C forms promptly to:

Commissioner RCMP
Identification Services
Directorate Civil Section
P.O. Box 8805
Ottawa, Ontario
K1G 3M8

7.8 Physical description

The IO who has arrested someone or who has asked a person to appear for inquiry or removal is responsible for placing an accurate description of the person on file. Note the person's height, body build, hair colour, eye colour, approximate weight and complexion. This information may be necessary if the person fails to appear or escapes custody.

7.9 Restraining devices

For information on restraining devices, see chapter III of the *Investigator's Guide*.

7.10 Retaking a person into custody

Retake into custody only applies to persons who have been previously detained or arrested. You should be fully aware that terms and conditions can be imposed on a person without the existence of detention: for example, where a removal order has been made against a person who has never been detained and terms and conditions have been imposed by an adjudicator or an SIO. You cannot retake this person into custody [A104]. However, you may arrest this person with or without a warrant if there are reasonable grounds to believe that the person would not appear for removal.

7.11 Arrest for inquiry and determination

When you are arresting without a warrant under A103(2), immigration management recommends that in all cases you clearly mark the documents for inquiry and determination, in the event that the person cannot be dealt with by the determination process. In most circumstances, an A27 report

will be required following a Notice of Arrest under Section 103 of the *Immigration Act* (form IMM 1285; see APPENDIX E). See Operations Memorandum IE 93–20 for more detailed instructions.

8. SEARCHES AND SEIZURE

8.1 Reasons for a search

Section 8 of the *Canadian Charter of Rights and Freedoms* provides that everyone has the right to be secure against unreasonable search or seizure. The test for reasonableness is whether you have reasonable grounds to believe that a threat to the security of the person, your security or that of any other person existed. An example of a threat to security is a situation in which you believe that the person is hiding an item that could be used to injure himself or herself or others, or which could be used to assist an escape.

8.2 Searching a person

It is the department's policy that if a person has been arrested or detained under the Act, you must search that person.

The Act specifically allows you to search a person at a POE [A110(2)(a.1), A110(2)(a.2)], if authorized by an SIO [A110.1(1), A110.1(2)]. The Act prohibits search under this section by a person who is not of the same sex [A110.1(3)].

The necessity for searches and your right to search have long been recognized and supported by the courts, and are now well–entrenched in common law. The courts have ruled that as a peace officer you may search an arrested person, and remove from that person any items within three categories:

- anything with which a person might injure himself or herself or others
- any weapon or implement that might assist in the person's escape, and
- anything that can be considered as evidence in the violation for which the person has been arrested.

8.3 Violent behaviour

At any time you may be faced with a person whose behaviour is unstable, incoherent or violent. If the person is not under arrest or detention, you should isolate him or her from spectators and then call for police assistance. Because you will not yet have arrested or detained the person, you should not conduct a search.

8.4 Searching private premises

The Act does not give you authority to search private premises to obtain evidence. Illegal search is tantamount to trespass and may result in damages being awarded to the injured party.

You may search for evidence of an offence under A94 only if the RCMP first gets a search warrant. The RCMP handles all prosecutions under the Act. The courts would find it improper for you to get a search warrant under the guise of searching for evidence of an offence under A94, if your intention was to search for illegal aliens or evidence for an inquiry or examination.

8.5 Securing a travel document on private premises

If a person under arrest asks you to enter private premises to secure a travel document, and the person cannot accompany you, you should get the written consent of the person concerned to enter the premises and to secure the specific document.

The written consent is valid only to enter that person's dwelling and not someone else's. To avoid possible allegations of theft, you should enter the dwelling with another officer. Where feasible, you should encourage the landlord or owner of the premises to remain present.

8.6 Seizing documents

The first element of A110(2)(b) describes the kind of document you may seize or hold:

> at a port of entry or in Canada any travel or other documents that may be used for the purpose of determining whether a person may be granted admission or may come into Canada.

The second element describes when you can do this:

> where the immigration officer believes on reasonable grounds that that action is required to facilitate the carrying out of any provision of this Act or the regulations.

Under A110(2)(c) you may seize and hold any passport, travel or identity document, or any other document, if you have reasonable grounds to believe that the document has been fraudulently or improperly obtained or used, or that seizure is necessary to prevent the fraudulent or improper use of the document.

You do not have the authority to seize documents, especially travel documents, merely for the sake of convenience. You may seize and retain travel documents only in cases where:

- the person concerned has been arrested under the Act, or
- the person concerned is detained for inquiry or removal, or
- there is cause for concern that the person may deliberately lose or destroy the document to prevent or delay removal from Canada, or
- you know or strongly suspect that the travel document, or a visa or port stamp in it, is fraudulent or altered.

See APPENDIX F for information on fraudulent documents.

You should record any identifying or other information contained in the passport or travel document that is necessary for your investigation or status check, and return the document to the holder.

A person may consent to producing a document, which may become subject to seizure. Clearly note this information in your notebook. You may be called upon to satisfy the courts that the person gave consent to produce the document. If you have arrested a person, you should search him or her and seize the documents you find during the search, whether they are in view or not.

You should store seized documents safely at your local office until final disposition of the case. Always provide the holder with a receipt for a seized document. For returning seized documents on completion of immigration action, see s. 49 of the *Immigration Regulations*. In inland

cases, return seized documents to the owner or the proper issuing authority either on the person's removal or when a decision is made to allow the person to remain in Canada. You must always provide the holder with a receipt (form IMM 5079) for a seized document and a Property Receipt (form IMM 5041; see APPENDIX G).

You are responsible for any documents in your possession. If you take possession of personal documents (such as airline tickets) to photocopy or record information from them, you should promptly return the documents to the holder.

When you seize documents from a person and the possibility exists that charges may eventually be laid by the police, the continuity and security of passports and documents or other evidence required for court proceedings become an issue. You should handle every document you seize as a potential piece of evidence.

If you seize an altered or counterfeit document or passport, or a document or passport that is not in possession of the rightful holder, to maintain continuity of evidence you should:

- note on the case file and in your notebook the date, time and place where the document came into your possession.
- make a photocopy of the document. On each page stamp *certified true copy*, and put the time, date and your initials. It is essential that you retain the certified true copies on file, because you may be required to testify in court that the document has remained unchanged since it came into your possession.
- seal the evidence in an envelope and write your initials across the envelope seal. Secure the flap with transparent tape. Hand–write the contents, your initials, the time and date on the envelope.

If another officer needs to remove evidence from the envelope for examination, that officer must repeat the procedures just itemized. If you need to refer to the document, you should refer to the certified true copies on file.

If a police officer wishes to take possession of the document from the immigration file, to assist in continuity the police officer should:

- open the envelope in the presence of the IO who placed the document in the envelope originally, verify the contents of the envelope with the certified true copies, and write his or her initials, the time and date on the certified true copies.
- provide the IO with a receipt that includes the police officer's signature and regimental number. The IO should place this receipt in the immigration case file.
- write his or her initials, the time and date on the original document in the same manner as the IO who placed the document in the envelope originally.

The IO must make a note of these procedures and place the note on file for future reference. The IO should also enter this information in his or her notebook.

9. PREPARING A27 REPORTS

9.1 Legal requirements

The Act requires you to submit a report on a person described in A27(1) or A27(2). If you have information in your possession indicating that a person is described in A27, you must write a report even if you believe that an inquiry would not be directed by the Deputy Minister's delegate in the circumstances of the case. Generate the A27 report on the Field Operational Support System (FOSS; FDE 1442) or manually complete the Report under Section 27 of the Immigration Act form (IMM 1241; see APPENDIX H).

In the A27 report you must include:

- the identity of the person you are reporting, in the *Particulars* section
- the proper paragraph or subparagraph of A27 under which you are making the report
- the words of the Act for the provisions under which you are making the report, with any necessary changes for plurality or gender
- any other names or aliases used on supporting documentation that may be produced at an inquiry, and
- enough facts supporting your report to let the person concerned know what allegations he or she will face at an inquiry.

For evidence requirements for specific allegations, see APPENDIX D of chapter EC 2, *Immigration Inquiries*.

Instruments I–26 and I–27 list the officers who have delegated authority to receive written A27(1) and A27(2) reports.

9.2 Narrative memorandum

For all A27(1) cases, you should include with the report a detailed memorandum addressed to the Director or Director General, Immigration or your CIC Manager, as applicable.

The first part of your narrative memorandum is a factual statement, not personal opinion, including:

- the person's identity, with name, aliases, date and place of birth, citizenship, and admission particulars
- details on the violations, and a parole or release date if the person is serving a sentence, and
- background information, including (as applicable) the person's employment, marital status, financial standing, degree of establishment, family outside Canada, details of passports and travel documents, and the status in Canada of the person's spouse and children.

The second part of your memorandum includes your opinions and recommendations, such as:

- your opinions on the person's family relationships, degree of establishment, and reasons for contravening the Act
- your recommendation, with a rationale, and

- your reasons for any delay in submitting your report.

If you recommend an inquiry, attach these documents (in duplicate) to your memorandum:

- certified true copies of all relevant immigration documents, and other certificates and affidavits that can be obtained from the records manager of the Query Response Centre at National Headquarters, if applicable
- originals or certified true copies of other documents relevant to the case, such as a birth certificate, marriage certificate, and a certificate of conviction or other evidence of a previous conviction that is acceptable in a court of law
- police occurrence reports
- probation, parole and psychiatric assessments
- police records and information on other convictions not reportable under A27(l)(d), and
- a copy of an Application for Search of Citizenship Records (form MCC 3–58).

If you send a certificate of conviction, you should ensure that the conviction — as opposed to the original charge — meets the requirements of the subsection or paragraph of A27 under which you are reporting the person.

For reports under A27(1), complete and submit a Section 27(1) Highlights form (IMM 5084).

9.3 Persons who elude examination under A27(2)(f)

If you are reporting a person under A27(2)(f) as having eluded examination, you should also complete a Recommendation for Administration Fee form (IMM 5161). Under A91.1, transportation companies are liable to pay an administration fee for persons whom they brought to Canada, and who then eluded examination. Assemble any supporting documentation that provides evidence that the individual was transported by a particular carrier, such as a passenger declaration (form IMM 5160), copies of travel tickets, boarding passes, and a declaration by a witness (form IMM 1392). Send the recommendation and supporting documents to:

Port of Entry Control
Enforcement Branch
Immigration Canada
Ottawa, Ontario
K1A OJ9

If you cannot identify a transportation company, or if no transportation company was involved, do not complete an IMM 5161 form.

9.4 *Contraventions Act*

The Enforcement branch will send out Operational Memoranda to describe the effect on reports and arrests of the new *Contraventions Act* (passed on October 16, 1992).

9.5 Information exchange with other EIC programs

Government departments and agencies may collect personal information only when it relates directly to a program or activity of the institution. The information has to be collected from the individual, whenever possible, and the individual must be informed of the purpose for which it is being collected at the time that it is collected. Personal information about an individual can only be disclosed to someone else with that individual's consent, or when one or more of the criteria set out in the *Privacy Act* are met. Under paragraph 8(2)(a) of the *Privacy Act*, personal information may legally be disclosed if the information is supplied to accomplish the purpose for which the information was originally collected, or for a use consistent with that purpose. This is commonly referred to as the *consistent use* provision. If you have any doubts about requests for personal information, consult your regional privacy co–ordinator or public–rights officer.

10. SPECIAL TREATMENT OF UNACCOMPANIED MINORS

10.1 Referring minors for review

When you are considering a report on an unaccompanied child under 18 years of age, and enforcement action may be taken against the reportable minor, you must refer the case to the Regional Director General or Director of Immigration for a review of all the circumstances. An adjudicator cannot consider humanitarian and compassionate factors, and it is clearly more appropriate to consider these factors before an inquiry is started.

Send your referral by secure facsimile or memorandum, as warranted. Your referral should include all facts and circumstances of the case:

- relatives in Canada, identified by relationship (specify if there are none)
- relatives abroad, identifying the family or parental situation in the child's home country
- dependency for support, noting who normally cares for the child
- the child's attachment to Canada, and his or her motivation in coming to Canada
- the involvement of provincial child–welfare authorities, or an equivalent organization abroad, if appropriate
- involvement by any other provincial organization or non–governmental organization (provincial age limits may determine whether child–welfare authorities or another organization are involved), and
- any humanitarian and compassionate considerations.

10.2 Arrest and detention of minors

You must exercise caution if minors are involved when you are dealing with the arrest and detention provisions of the Act.

You should make every effort to avoid detaining a minor. Concern for the protection of the minor's welfare is not a ground for arrest under A103. The indigence of a minor, however, may be a strong indicator that the minor is unlikely to appear for inquiry or for removal.

For children included as part of a removal order involving their parents, the normal removal process applies.

10.3 Unaccompanied minors and the inquiry process

If you determine that it is clearly the stated intent of an unaccompanied minor to claim refugee status under A44(1), the normal process applies. Depending on the allegations against the minor, an SIO may review the case and issue a departure order or conditional departure order, or the case may proceed to inquiry before an adjudicator [A27(4), A27(6)].

10.4 Young offenders

You should get the consent of your manager before taking any action against a young person.

Under the *Young Offenders Act*, a young person is a person who is, or in the absence of evidence to the contrary appears to be, 12 years of age or more but less than 18 years of age. Under the *Young Offenders Act*, an offence is defined as an offence created by an Act of Parliament or by any regulation, rule, order, by–law or ordinance made under an Act, other than an ordinance of the Yukon Territory or the Northwest Territories.

The *Young Offenders Act* permits a youth court to make a finding of guilt against a young person. A finding of guilt can result in an absolute discharge, or in a disposition that does not equate to a conviction under the *Criminal Code*. If a youth court directs that a young person be discharged absolutely, or if all dispositions concerning the offence have ceased to have effect, you must consider the young person as not having been convicted [*Young Offenders Act*, s. 36].

Dispositions that are still in effect under the *Young Offenders Act* cannot be considered convictions for the purposes of A27(1) and A27(2).

A young offender convicted in adult court in Canada (that is, under the provisions of the *Criminal Code*), is subject to the provisions of A27(1) and A27(2) dealing with criminal convictions.

When you are determining equivalences between foreign and Canadian law concerning young persons, you should analyze the effect of the dispositions available to deal with the young person in the foreign court. If the foreign jurisdiction has a special procedure for young persons that does not create a conviction equivalent to a conviction under the *Criminal Code*, it may be that A19 will not prevent admission to Canada. If a young person has been processed under a special procedure in the foreign jurisdiction, but a conviction with the effect of a conviction under the *Criminal Code* in Canada has been recorded, A19 will bar the person's admission to Canada.

If the foreign jurisdiction has a special procedure for young persons but the young person was convicted under the procedures for adult offenders, you should follow normal procedures, with one exception: when the young offender has committed an offence for which, in Canada, he or she could not be transferred to adult court (see s. 16 of the *Young Offenders Act* and s. 553 of the *Criminal Code*).

Under the *Young Offenders Act*, a child is defined as a person who is, or in the absence of evidence to the contrary appears to be, under the age of 12 years. A child is not held criminally responsible in Canada.

11. ENTRY OF DIPLOMATS, CONSULAR OFFICERS, AND REPRESENTATIVES OR OFFICIALS OF A FOREIGN COUNTRY, OF THE UNITED NATIONS AND OF INTERNATIONAL ORGANIZATIONS

Because you may be called on to determine whether to write a report concerning a diplomat, consular officer, representative or official of a foreign country, of the United Nations or of an international organization, or a member of that person's family or staff, you should be aware of the special circumstances of those persons' status in Canada.

11.1 First entry to Canada

Except for persons holding diplomatic, official, special or service passports from Turkey, all persons coming to Canada on posting, *including their families*, must be in possession of diplomatic or official visas.

An examining officer must simply stamp the passport of such a person, thereby authorizing entry for a period of six months [A26(2); *Immigration Regulations*, s. 24.1]. There is no need to document the person. During the six–month period the person's embassy, consulate or organization will forward the passport to the Office of Protocol of the Department of External Affairs and International Trade. The Office of Protocol will issue a diplomatic (D), consular (C), official (J) or international (I) acceptance, which indicates that the person is accredited to Canada and entitled to remain in Canada for the duration of status.

Under s. 19(1)(a) of the *Immigration Regulations*, a person who is in Canada as a properly accredited diplomat, consular officer, representative or official of a foreign country, of the United Nations or any of its agencies, or of any intergovernmental organization in which Canada participates, and members of the person's suite, are exempt from obtaining employment authorization for the purpose of carrying out official functions. Members of the suite other than dependents are subject to all other visitor requirements.

11.2 Visa requirements

Except for persons holding passports from Turkey, all persons coming to Canada on posting, *including their families*, must apply for and obtain entry visas — diplomatic (D) or official (O) — before presenting themselves at Canadian POEs.

Schedule II of the *Immigration Regulations* provides that persons holding passports containing a valid and subsisting diplomatic, consular, official or international *acceptance counterfoil* issued by the Chief of Protocol for the Department of External Affairs and International Trade are *not* required to obtain a visa before appearing at a POE [*Immigration Regulations*, s. 13(1)].

11.3 Honorary consuls

An honorary consul is not a career diplomat of the sending state and must be, by definition, a Canadian citizen or permanent resident of Canada. He or she is not empowered to engage staff as members of the consulate under the provisions of the Vienna Conventions on Diplomatic and Consular Relations, unless the staff members are appointed by the sending state and recognized by the Office of Protocol.

As a private–citizen employer, an honorary consul may engage Canadian citizens, permanent residents or persons who are in possession of an employment authorization as required by the Act and its regulations.

11.4 Dependants

Dependent children of diplomats, consular officers, representatives or officials who are under 19 years of age and considered to be "members of the family forming part of the household" will be issued acceptances. They are not required to obtain student authorizations. Children over 19 years of age will be issued acceptances only if they are registered as full–time students.

After 25 years of age, dependants are no longer eligible to receive official acceptances and must change their official status to a regular immigration status. Children over 25 years of age who are full–time students may obtain a visitor's status with the permission to study, if they qualify as dependent children under the *Immigration Regulations*. They are exempt from having to obtain a student authorization under s. 14.2 of the *Immigration Regulations*.

Members of the suite of a person coming to Canada on posting (other than persons just mentioned in this section 11.4) who wish to study in Canada are required to obtain student authorizations from immigration authorities.

11.5 Reciprocal agreements with sending states on employment

Diplomats, consular officers, representatives or officials, and members of their suite, must not take employment in outside jobs without authorization. Normal employment authorization procedures apply, bearing in mind that CEC validation may not always be necessary if a bilateral and reciprocal agreement between the sending state and Canada exists, allowing dependants of Canadian government officials to work in the sending state without any validation procedure [*Immigration Regulations*, s. 20(5)(e)(iii)]. The person must first address a request to the Office of Protocol for approval in principle. To date, reciprocal employment agreements have been reached with the following countries: Australia, Barbados, Brazil, Colombia, Denmark, Germany, Finland, France, Ghana, Great Britain, Guyana, Haiti, Hong Kong, India, Ireland, Ivory Coast, Israel, Jamaica, Morocco, New Zealand, Norway, Peru, Philippines, Sweden, Trinidad and Tobago, and the U.S.

11.6 Violations of the Act and its regulations

If an accredited member of a foreign mission violates the Act or its regulations, you must consider both the Act's provisions for immigration–related procedures and international conventions such as the Vienna Convention. It is the department's policy not to refer a person to inquiry as long as he or she is an accredited member of a foreign mission.

Where circumstances warrant such action, an accredited person may be declared *persona non grata*, or the sending state may be requested to recall the person concerned or terminate his or her functions with the mission. If the person's accreditation is cancelled, inquiry action may be taken for violations that may have occurred before or after the period of accreditation of the person concerned. You should decide cases individually, in consultation with the Office of Protocol.

11.7 Forwarding information to National Headquarters

In consultation with the Department of External Affairs and International Trade, National Headquarters will deal with cases where it is determined that there have been violations of the Act or its regulations involving persons accredited to foreign missions, and cases involving persons who are employed by foreign missions but who have not been properly accredited.

You should address an A27(2) report (if appropriate), with a memorandum from the CIC Manager outlining the circumstances of the case, to:

Director, Case Analysis and Co–ordination
Case Management Branch
Public Security Department
Ottawa, Ontario
K1A 0J9

You should send the report and memorandum through Regional Headquarters.

You should address questions related to diplomats, consular officers, representatives and officials of foreign missions in Canada through National Headquarters to the Office of Protocol, External Affairs and International Trade Canada, Ottawa, Ontario K1A 0G2. In case of emergency, contact the Immigration Advisor at the Office of Protocol (tel: 613–995–5957).

12. DETENTION

12.1 Grounds for detention

Detention under the Act signifies a loss of freedom by the detained person. You must have the same reasonable grounds for detaining as for arrest under the Act.

When you are deciding whether grounds for detention exist, you should consider these points:

- does the person pose a danger to the public? Consider medical and police information, and the person's behaviour during immigration proceedings. Not all criminals pose a danger to the public.
- is the person likely to be available? The answer to this question is the sum of a number of considerations. In situations of doubt, give the benefit of the doubt to the person. On the one hand, consider whether the person:
  - has violated a previous bond
  - has moved continuously or provided a false address to avoid detection
  - has lied, escaped or attempted to escape from custody
  - has no place of abode
  - has returned to Canada following a previous deportation
  - has a criminal record, and
  - has previously failed to appear for judicial proceedings or for interview or examination.

  On the other hand, consider whether the person:
  - has responsible relatives or friends in Canada
  - can provide a meaningful bond or security deposit
  - has reported voluntarily to the EIC, and
  - has substantial non–moveable assets in Canada.
- what is the length of time until the inquiry is to be held? If through no fault of the detainee an inquiry date has been set far in the future, for example, you might give the detainee the benefit of the doubt about the likelihood of his or her appearance.

12.2 Rights of detainees

When you detain someone, you must inform the person of his or her rights under s. 10 of the *Canadian Charter of Rights and Freedoms*, which provides that everyone has the right on arrest or detention to be informed without delay of the right to retain and instruct counsel without delay. If the person cannot afford legal counsel, access to free legal aid may be available to the person. You must also inform a detained person of rights conferred by the Vienna Convention (form IMM 689). In addition, s. 10 provides the right on detention to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

12.3 Destitution and indigence

When you are deciding whether to detain a person, you should consider whether the person has no apparent means to ensure his or her presence at inquiry or to effect removal. You may not detain persons under the Act

simply because they are indigent. Destitution is not conclusive evidence that the person concerned will not appear. You should be aware of voluntary community resources who might be able to help if a detainee were released.

12.4 Potentially violent detainees

You should be alert at all times for the possibility that a detainee may become violent and place you in danger. For warning signs, see section 12.7 below. If you detect the potential for violent behaviour, or if you witness an act of violence, you should immediately contact the nearest police force to get help. Until help arrives, call on your colleagues for assistance, if necessary.

12.5 Designation of Immigrant Stations

In accordance with the Ministerial authority delegated in item 7 of Consolidated Instrument of Delegation 4 [see chapter IL 3], the Director General, Enforcement Branch at NHQ has designated the following as immigrant stations for the detention or holding provisions of the Immigration Act:

- facilities leased by the department either on an ongoing basis or as and when required [see Appendix J];
- all immigration quarters at ports of entry and at Canada Immigration Centres;
- all penitentiaries, common gaols, public or reformatory prisons, lock–ups, guarded rooms or other places in which persons who are charged with or convicted of offences under the Criminal Code are usually kept in custody [see Appendix K]; and
- all hospitals, sanitariums, nursing homes or other institutions operated for the observation, care or treatment of persons afflicted with or suffering from any physical or mental illness, disease or injury or for observation, care or treatment of convalescent or chronically ill persons.

12.6 Holding detainees at CICs

You may hold a detained person for a few hours at most in a CIC holding room. A holding room is any area that the CIC has designated as secure, and which can be used to hold detained persons. It may be a specially designed room or an existing work area, such as a conference room. If the CIC does not have a full–time detention and escort officer, an IO at the CIC is normally designated as the officer responsible for the holding room. For further information on holding rooms, see APPENDIX I.

12.7 Detention in areas with leased facilities

A detainee may be held in a leased medium–security hotel facility (see Instrument I–20 and APPENDIX J), unless the facility is filled to capacity or the person:

- has a criminal record involving acts of violence
- is facing criminal charges in Canada involving violence
- is wanted in another country for criminal acts in which violence was involved

- has been diagnosed as mentally unstable
- has exhibited violent behaviour towards staff or another detainee at the leased hotel facility
- has escaped previously from the hotel facility or has attempted to escape, or
- attempts suicide or goes on a hunger strike while in the hotel facility.

If the person falls within one or more of those categories, he or she must be held in a provincial or municipal facility designated by Instrument I–20.

12.8 Federal and provincial institutions

APPENDIX K lists the federal and provincial jails within the jurisdiction of each CIC. Use the list as a guide when you need to transfer a file to the appropriate CIC, and to get information about a person serving a sentence who has been moved to another institution.

12.9 Reasonable arguments for continued detention

The Act provides a system of checks and balances which allows the person to have the reasons for continued detention reviewed (see section 13. below), and which authorizes release by an SIO or adjudicator (see APPENDIX L). You must ensure that reasonable grounds exist to indicate that the person has violated the Act, and that you have a basis for your opinion that the person poses a danger or would not appear.

13. DETENTION REVIEWS

You may be called in to investigate someone's identity after an IO has detained an unidentified person, and after an SIO has reviewed any information and other evidence about the person's identity. The SIO may continue the detention for a period not exceeding seven days from the time the person was first detained, as recorded by the examining officer [A103.1]. If you satisfactorily establish the person's identity and background, the SIO will cause the person concerned to be brought before an adjudicator.

Your investigation into a detained person's identity has the highest priority. An investigation into the identity of a detained person should start immediately on the person's admission to a detention centre. If, after eight weeks, you are still unable to identify the identity or nationality of a detained person, you should prepare a report for the Chief, Investigations, Detention and Removals, National Headquarters. You can take the following steps to assist in establishing identity:

- double–check the file for addresses, associates, employers, relatives, and so forth
- request an interpreter's opinion on the person's dialect and comments made
- take the person's fingerprints and photographs, and forward them to the RCMP
- interview the person regularly
- interview friends, relatives and associates of the person
- check CPIC and the U.S National Crime Information Center (NCIC)
- check with the local welfare agency, and
- have the person interviewed by consular staff of the country of which the person is purportedly a citizen.

Your investigations into questions of identity must be carried out diligently and in the shortest possible time. As a person's time in detention lengthens, you may be called on to present even stronger evidence that your investigation will confirm the person's identity in a specific period of time. You must monitor individual cases closely (see section 13.2 below), and carefully document your efforts to establish identity.

13.1 Investigations following an A103.1(1) review by an SIO

An SIO or a CPO will be called on at a detention review or an inquiry to satisfy an adjudicator that he or she is making reasonable efforts to establish the identity of an unidentified person who is detained. You should be prepared to provide the SIO or CPO with a detailed account of all your efforts to that point, and with your estimate of the time it normally takes you to find out the necessary information from your sources, including other government departments.

You should use every possible means to follow leads. As with any investigation, this may require a selective approach based on your assessment of the quality of the lead and the likelihood of success. You

could remind the detainee and counsel that they can help to speed up release by providing complete personal information, and by independently seeking documentary evidence in the country of the detainee's origin (where the person has not put forward a claim to Convention refugee status).

You do not need the person's consent to release personal information in the course of your status checks. Paragraph 8(2)(a) of the *Privacy Act* provides for the release of personal information when the release is for the purpose for which the information was obtained: in this case, for establishing the person's identity.

Except for the U.S., the appropriate Canadian consulate or high commission should handle all approaches to persons abroad.

13.2 Monthly detention monitoring report

To ensure that every effort is being made to limit the length of detention in individual cases, and to identify the reasons that contribute to long–term detention, each office is responsible for preparing a monthly detention monitoring report on persons who have been in detention for 60 consecutive days. National Headquarters prepares a monthly consolidation of regional reports, and sends it to the Minister and senior management at National Headquarters.

When you report on a detainee for the first time, you must provide all of the following information:

- the detainee's complete name (surname, given names)
- the date of birth (dd/mm/yy) and sex (m/f)
- the country of citizenship
- whether the detainee was arrested by investigators or referred by police
- the reason for detention (for example, the specific criminal offences, danger to the public, or no–show)
- the place of detention
- the date that detention began
- significant events and dates in detail, including written and verbal communications (such as the hearing results, request for a travel document, release offer, deportation order, and follow–up to a request for a travel document)
- the date the person was removed or released
- the country to which the person was removed
- the circumstances of release (cash bond, performance bond, terms and conditions, or a combination of these), and
- your comments.

You may submit your report on the Monthly Detention Monitoring Report form (IMM 654; see APPENDIX M), or on a regional form. You may find it practical to use a separate form for each detainee.

Once a detainee has appeared on a report, you must report on the person in each subsequent monthly report, up to and including the month in which removal or release takes place. For persons remaining in detention, report only on these items:

- the detainee's complete name

- significant events and dates (include only the significant events that occurred during the report month)
- the date the person was removed or released
- the country to which the person was removed
- the circumstances of release, and
- your comments.

You should also report any action taken to move the case along.

Send the report by facsimile to National Headquarters (fax: 819–953–8119) on the first working day of each month. You may fax nil reports, or telephone them in (tel: 819–953–3213).

14. TESTIFYING

14.1 Preparation

At some stage in your career you can expect to testify in court, at an immigration inquiry, or possibly at some other tribunal.

In criminal trials, you may be subpoenaed to appear in court to testify. This may include testifying at a *voir dire*, which is like a trial within a trial, held to ensure that statements taken by persons in authority, including investigators, are given freely without the use of force or threat. When you are being subpoenaed by a police officer, you should ask what evidence will be required. If the police officer wants you to bring the immigration case file, you should tell the officer that the file will have to be subpoenaed as well.

Criminal trials and immigration inquiries often take place several months after the actual arrest or reporting of the person concerned. Well before testifying you should ask the Crown attorney or CPO what is expected of you, so that you know which notebooks and documents to use. Before testifying you should review the notes and case file, keeping in mind the salient points that the Crown attorney or CPO wants to cover.

14.2 Format for presenting evidence

In court or at an inquiry each witness gives evidence in three stages:

- examination by the side calling the witness, which can be the CPO, the Crown attorney, or the defence counsel
- cross–examination by the other side, used to:
  - weaken, qualify or destroy the evidence given by the witness
  - make one's own case using the testimony of the other side's witness, or
  - test or attack the credibility of the witness, and
- re–examination by the side that originally called the witness, used to resolve any ambiguity or point that became confused as a result of cross–examination.

14.3 Conduct as a witness

You should dress conservatively, following the dress guidelines in chapter III of the *Investigator's Guide*. Conduct yourself in a business–like manner when you are waiting to testify, and when you are in the court or inquiry room. Be pleasant, courteous and impartial.

When you are called, you will be required to take an oath or affirmation. Normally you will be asked to state your occupation, your present job position, the number of years you have spent in that position, and your work location.

When you are asked a question, be sure that you understand it before answering. Answer only what is asked: don't volunteer information. If you can answer a question with a simple *Yes* or *No*, then that is the answer you should give. Don't give opinions. Give your testimony slowly, so that everyone in the court or inquiry room can hear it.

See section 6.5 above on what to do if you want to consult your notes.

If defence counsel asks you a question that you know you should not answer, give the Crown attorney or the CPO time to object. This doesn't mean that you should look at the Crown attorney or the CPO whenever defence counsel asks such a question; merely pause slightly before starting to answer.

When you are unsure of a fact, or you don't have any further information, you should state just that. If you make a mistake or error, correct it without hesitation; if you try to defend a slight error or slip, your entire testimony could be discredited. If you are asked to relate a series of events, such as what took place during the course of a call, you should recount the events simply and in chronological order.

Defence counsel may be provocative during cross–examination. Your best response is simply to state the facts, remain calm, and control your temper. If you allow yourself to get angry or agitated, you are more likely to contradict yourself.

Counsel in a court room may get very close to you to intimidate you. Your best response is to stand your ground and avoid the natural tendency to pull backwards.

Always address your remarks to the judge, jury or adjudicator, even if counsel tries to get you to speak in another direction.

When you are leaving the witness box or chair, don't indicate relief or despair. Any expression of emotion could subtly influence the decision of a jury, judge or adjudicator.

15. ALLEGED WAR CRIMINALS

You might receive an allegation that a person is a war criminal, and that the person is a resident of Canada, or a person in the process of claiming refugee status, or a person in the process of applying for entry to Canada at a post abroad. If so, log the details on the Log — Alleged War Criminals form (IMM 1457; see APPENDIX N). You should set up file cross–references, in case you receive several unrelated reports on the person.

Documentary evidence of various kinds may accompany the allegation, particularly if the allegation comes from representatives of a group with research facilities, such as an ethnocultural or religious organization. Evidence in the form of a criminal conviction for a war crime or a crime against humanity will likely be extremely rare; if you do receive such evidence, you might use it directly as a basis for an A20 or A27 report. Other types of evidence may come from a foreign government.

If the person against whom the allegation was made is in Canada, you should assess the allegation's credibility and record your assessment at the local level. If you find that the allegation has a credible basis, refer it and any documentary evidence to the local RCMP detachment for follow–up, as deemed appropriate.

If the person against whom the allegation was made is applying to enter Canada through a Canadian post abroad, send the allegation to the appropriate immigration post for investigation by the normal security and criminal examination process.

Because of the sensitive nature of the allegation and the potential for media attention, before you write a report against an alleged war criminal under A19(1)(j), A27(1)(g) or A27(1)(h), or A27(2)(a) for A19(1)(j), you must consult the Chief, Security Review (OPSB), Case Management Branch, National Headquarters.

The Act allows you to submit non–releasable evidence against a person to the Chief of the Security Review Division, who may consider issuing a security certificate. If non–releasable evidence comes to your attention, contact the Chief of the Security Review Division to see if the division is considering a request for a certificate, and whether you should forward the evidence. If the division issues a security certificate, write a report on the person and request a direction for inquiry.

16. INTERVENTION, CESSATION AND VACATION

You may have occasion to deal with information on intervention, cessation and vacation procedures to protect the integrity of our refugee determination system.

Appeals officers requiring information or documents for appeal hearings in addition to what is contained in the record will make a request to the CIC. Department of Justice officers making such requests will generally channel them to the field through the appeals offices. Officers who follow up the requests in the field must bear in mind that the material required must reach the appeals or Justice officer well in advance of the hearing, because the *Immigration Appeal Division Rules* require that it be served on the other party at least 20 days in advance [*IAD Rules*, rule 18(1)].

If an officer in Canada or overseas becomes aware of new information respecting an appellant, such as criminal activity, the officer should forward a narrative report to the appeals office with appropriate documentation. IOs, however, should not approach appellants while their appeals are outstanding to seek adverse information or evidence against them for presentation at their appeal hearing, except on the advice of the appeals office.

Officers must submit information and documents in a form suitable for presentation to the Immigration Appeal Division (IAD)

of the Immigration and Refugee Board. An officer who interviews a person regarding an appellant, whether or not the person may be called as a witness, should attempt to secure a statutory declaration from the person interviewed. If this is not possible, the interviewing officer should prepare his or her own statutory declaration recording the information or identifying documents received. An officer's declaration should contain only facts, not opinions or conclusions, and should clearly indicate that the person making the declaration is an IO.

When forwarding information or documents that were obtained from police or similar agencies, the CIC should indicate if there are any restrictions on the release of the information to the IAD. Officers should make sources aware that all documents presented to the IAD are also provided to the appellant and counsel, in addition to becoming part of the public record. The appeals office should be notified of all changes of address or transferring of files from one CIC to another.

16.1 Intervention

An appeals officer may intervene at the hearing of a refugee claimant before the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board where there is information to believe that the claimant would fall within the exclusion clauses (sections E and F) of Article 1 of the United Nations 1951 *Convention Relating to the Status of Refugees* and 1967 *Protocol Relating to the Status of Refugees* (the Convention).

While recognizing that refugees are in need of protection, the Convention also contains provisions whereby persons who might otherwise qualify for refugee status are excluded from the protection that this status provides. The definition of Convention refugee set out in A2(1) expressly excludes persons described in section E of Article 1 of the Convention:

> E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

Persons described in section F of Article 1 of the Convention are also excluded from the definition of Convention refugee:

> F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
>
> a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
>
> b) he has committed a serious non–political crime outside the country of refuge prior to his admission to that country as a refugee;
>
> c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Section 69.1(5)(a)(ii) of the Act allows the Minister's representative to intervene and present evidence, question the claimant and other witnesses and make submissions at a determination hearing where matters involving section E or F of Article 1 of the Convention or A2(2) are raised by the claim.

16.2 Cessation of Convention refugee status

The Convention recognizes that in certain circumstances a person who has been previously determined to be a Convention refugee will no longer be in need of protection. A person ceases to be a Convention refugee when:

- the person voluntarily re–avails himself or herself of the protection of the country of nationality
- the person voluntarily reacquires his or her nationality
- the person acquires a new nationality and enjoys the protection of the country of this new nationality
- the person voluntarily reestablishes himself or herself in the country that the person left, or outside of which he or she remained by reason of fear of persecution, or
- the reasons for the fear of persecution in the country that the person left, or outside of which he or she remained, have ceased to exist [A2(2)].

Section 69.2 of the Act gives the CRDD the authority to determine, on application by the Minister, if a person has ceased to be a Convention refugee. Such issues will arise infrequently at determination hearings, the usual forum being the hearing of a cessation application. Cessation proceedings can apply to any person who was determined under the Act or its regulations to be a Convention refugee, including persons recognized as Convention refugees by Canadian visa officers abroad and persons found to be Convention refugees in Canada under the present or previous refugee determination systems. Cessation is not available for persons landed under the backlog regulations, nor under any other special measure where there has been no formal determination of refugee status.

Where grounds for a cessation application exist, they will most often come to an IO's attention where:

- a permanent resident, who was found to be a Convention refugee, is being reported for inquiry, or
- a person found to a Convention refugee is being considered for landing.

In a case where cessation may apply, the CIC manager should send a report on the case and originals of any relevant documents to the appeals office. The manager of the appeals office will consult the Chief, Appeals Section, National Headquarters on the appropriateness of making an application to the CRDD for a determination of the matter [A69.2(1)].

A person's renewing a passport is not necessarily an act that would lead to a cessation of Convention refugee status. The person would have to be prompted by a desire to normalize relations with the government of the source country or to benefit from his or her national status. The person must pursue the intention to return to the country, and it must be more than an occasional or incidental contact. In a case where the Convention refugee returns to the country of nationality, the cessation procedures cannot be initiated before that person returns to Canada.

16.3 Vacation and reconsideration hearings

The principle behind the reconsideration provisions is to deny the continued protection of Convention refugee status to persons whose claims were based on fraud or misrepresentation.

The Minister may, with leave of the Chairperson, make an application to the CRDD to reconsider and vacate any determination made under the Act or its regulations that a person is a Convention refugee on the ground that the determination was obtained by fraudulent means or misrepresentation, suppression or concealment of any material fact, whether exercised or made by that person or any other person [A69.2(2)].

An IO should bring to the attention of the CIC manager information which tends to establish that grounds to reconsider and vacate a person's refugee status exist. The IO should prepare a detailed report, attaching original documents if available, or certified true copies. The IO should keep the following principles in mind:

- testimony given to a visa officer regarding intentions during a proposed visit would usually be insufficient in itself for a reconsideration application
- the strongest type of evidence relating to fraud or misrepresentation will usually deal with issues such as identity, nationality and country of residence, indicating that the claim is a complete fabrication rather than merely being based on a few incorrect details, and
- the fraudulent means, or misrepresentation, suppression or concealment of a material fact, could have been exercised by the person concerned or by another person.

If it appears to the CIC manager that the person's claim was probably based on fraud or misrepresentation of a material fact, the manager should send the report and supporting material to the manager of the appeals office.

17. REQUESTING THE MINISTER'S OPINION UNDER A46.01 AND REQUESTING CERTIFICATES UNDER A40(1), A40.1 AND A82

The security review procedures in the Act allow the government to fulfil its duty to remove permanent residents and temporary entrants who are a threat to national security or whose presence endangers the lives or safety of persons in Canada. A determination that a person is inadmissible for these reasons cannot be made without the opinion of the Minister and the Solicitor General [A39(2), A40.1, and A81(2)].

Where a permanent resident is to be removed from Canada on these grounds, the Ministers' opinion must be reviewed by the Review Committee of the Canadian Security Intelligence Service and confirmed by the Governor in Council [A40(1)]. If the person is a person other than a Canadian citizen or a permanent resident, the Ministers' opinion must be reviewed by the Federal Court [A40.1(3)]. Should the Ministers' opinion be confirmed by the Governor in Council or upheld by the Federal Court, as appropriate, the Act provides for the expeditious removal of the person concerned with the issuance of a security certificate.

The new security review procedures recognize the need to co–operate with foreign governments and intelligence agencies to maintain national security. The Act includes provisions to protect the disclosure of information obtained in confidence from foreign governments or intelligence organizations. The court can examine the information in camera, and in the absence of the person to be removed or his or her counsel [A40.1(5.l)(b)(i)]. Counsel for the government is allowed a reasonable opportunity to make submissions that the information is relevant but should not be disclosed to the person for reasons related to national security or the safety of persons [A40.1(5.1)(b)(ii)]. If the court is not prepared to accept the submissions, the information is returned to counsel for the government [A40.1(5.1)(c)]. The court then proceeds with the determination on the basis of whatever other information is submitted by counsel, and cannot consider the protected information [A40.1(5.1)(c)(i)].

If the court decides in favour of the government, and the information is presented to the adjudicator in removal proceedings, the adjudicator does not have the jurisdiction to call into question the constitutionality of the review proceedings. All constitutional issues would, instead, have to be decided by a court of law [A40.2].

A request for a Minister's opinion or a security certificate may be made in the following situations:

- **refugee claimants**: the purpose of A46.01(1)(e)(i) and A46.01(1)(e)(ii) is to exclude from the refugee determination process persons convicted of serious crimes or other undesirables to whom Canada has no legal obligation under the 1951 *Convention* and the 1967 *Protocol*. The Minister's opinion on whether a person convicted of serious crimes poses a danger to the public [A46.01(1)(e)(i)] or whether it is contrary to the public interest to hear the claim in Canada [A46.01(1)(e)(ii)] is required to exclude persons from our refugee determination system. For further information on requests for a Minister's opinion, see APPENDIX B of chapter EC 3, *Determining Refugee Eligibility and Making Administrative Removal Orders*.

- **permanent residents**: the purpose of A40(1) certificates is quickly to remove permanent residents who are described in A19(1)(c.2), A19(1)(d)(ii), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(k) or A19(1)(l), A27(1)(a.1), A27(1)(a.3)(ii), or A27(1)(g) or A27(1)(h).
- **persons other than permanent residents and Canadian** citizens: the purpose of A40.1 certificates is quickly to remove persons other than Canadian citizens or permanent residents who are described in A19(1)(c.1)(ii), A19(1)(c.2), A19(1)(d), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k) or A19(1)(l) or A19(2)(a.1)(ii).
- **persons with the right to appeal to the IAD**: The purpose of A82 certificates is to prevent permanent residents described in A19(1)(c.2), A19(1)(d)(ii), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(k), or A19(1)(l), or A27(1)(a.1), A27(1)(a.3)(iii) or A27(1)(g) or A27(1)(h), or any other case described in A19(1)(c.2), A19(1)(d), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k) or A19(1)(l) access to appeal a removal order to the IAD.

As an investigator you may be called on to produce evidence to support a request for a Minister's opinion [A46.01(1)(e)(i) or A46.01(1)(e)(ii)] or a security certificate [A40(1), A40.1, or A82]. The supporting evidence may include, as appropriate:

- a conviction certificate
- warrant of committal
- reasons for conviction or sentence to confirm a conviction
- records of mental illness
- Health and Welfare Canada medical reports
- psychiatric evaluations or certificates
- police reports, and
- any data concerning incidents of physical violence showing that the person could be a danger to the public or a danger to the security of Canada.

All cases involving security reports and requests for certificates should be referred to Security Review, Case Management Branch, National Headquarters (tel: 819–994–6306).

For further information on evidence requirements, see APPENDIX D of chapter EC 2, *Immigration Inquiries*.

APPENDIX A

SAMPLE OF FORM MCC 3–58 (92–05) – APPLICATION FOR SEARCH OF CITIZENSHIP RECORDS

At Next Amendment

APPENDIX B

SAMPLE OF IMM 705 (1–85) B – CITIZENSHIP REGISTRATION AND PROMOTION

Employment and Immigration Canada | Emploi et Immigration Canada

Originating Office — *Bureau d'origine*

File No. — *N° de référence*

Date.

CITIZENSHIP REGISTRATION AND PROMOTION
P.O. BOX 7000
SYDNEY, N.S.
B1P 6V6

ENREGISTREMENT DE LA CITOYENNETÉ ET PROMOTION
C.P. 7000
SYDNEY (N.-É.)
B1P 6V6

The following information is provided for your consideration in the event an application for citizenship is made by the individual described below.

Les renseignements suivants vous sont transmis à titre d'information au cas où la personne concernée présenterait une demande de citoyenneté.

1. Surname and aliases — *Nom et noms d'emprunt* | Given names — *Prénoms* | Sex — *Sexe*
2. Place, country and date of birth — *Lieu, pays et date de naissance* | 3. Present status in Canada — *Statut actuel au Canada*
4. Date and place of landing — *Date et lieu d'obtention du droit d'établissement* | 5. Maiden name (if applicable) — *Nom de jeune fille (s'il y a lieu)*
6. Surname of spouse and aliases — *Nom et nom(s) d'emprunt du conjoint* | Given names — *Prénoms*
7. Surname of father and aliases — *Nom et nom(s) d'emprunt du père* | Given names — *Prénoms*
8. Surname of mother and aliases — *Nom et nom(s) d'emprunt de la mère* | Given names — *Prénoms*
9. Names of others affected — *Nom des autres personnes concernées*
10. Summary of adverse information — *Résumé des renseignements défavorables*

Name of Immigration Officer — *Nom de l'agent d'immigration* (please print) (*en lettres moulées*) | Signature of Immigration Officer — *Signature de l'agent d'immigration* ▶

IMM. 705 (1-85)

Canada

APPENDIX C
SAMPLE OF IMM 420 (05–93) B – WARRANT FOR ARREST

PROTECTED WHEN COMPLETED / *PROTÉGÉ UNE FOIS REMPLI* - A

Employment and Immigration Canada Emploi et Immigration Canada

WARRANT FOR ARREST

(Under subsection 103(1) of the Immigration Act)

MANDAT D'ARRESTATION

(Aux termes du paragraphe 103(1) de la Loi sur l'immigration)

To: **EVERY OR ANY IMMIGRATION OFFICER OR PEACE OFFICER**

*Pour: **TOUT AGENT D'IMMIGRATION OU AGENT DE LA PAIX***

WHEREAS _____ is a person
ATTENDU QUE _____, *est une personne à*

respecting whom

l'égard de laquelle

an examination is to be held	☐	*un interrogatoire doit être tenu*
an inquiry is to be held	☐	*une enquête doit être tenue*
a removal order has been made	☐	*une mesure de renvoi a été prise*
a conditional removal order has been made	☐	*une mesure de renvoi conditionnel a été prise*

under the terms of the Immigration Act, I hereby command you to arrest the said person and detain him/her, in accordance with the provisions of the Immigration Act.

aux termes de la Loi sur l'immigration, je vous ordonne par les présentes d'arrêter ladite personne et de la faire détenir conformément aux dispositions de la Loi sur l'immigration.

Dated at _____ this _____ day of _____ 19____
Fait à _____ *ce* _____ *jour de* _____

Authorized Officer — *Agent autorisé*

Title as delegated in Instrument — *Titre selon le Document officiel*
☐ I-17 or/ou ☐ I-29

This form has been established by the Minister of Employment and Immigration
Formulaire établi par le Ministre de l'Emploi et de l'Immigration

Canada

IMM 420 (05-93) B

APPENDIX D

SAMPLE OF IMM 689 (9–93) B – NOTICE OF RIGHTS CONFERRED BY THE VIENNA CONVENTION AND TO THE RIGHT TO BE REPRESENTED BY COUNSEL AT AN IMMIGRATION INQUIRY

Employment and Immigration Canada Emploi et Immigration Canada

NOTICE OF RIGHTS CONFERRED BY THE VIENNA CONVENTION AND TO THE RIGHT TO BE REPRESENTED BY COUNSEL AT AN IMMIGRATION INQUIRY
AVIS DES DROITS CONFÉRÉS EN VERTU DE LA CONVENTION DE VIENNE ET DU DROIT DE SE FAIRE REPRÉSENTER PAR UN CONSEILLER À UNE ENQUÊTE

PROTECTED WHEN COMPLETED – B
PROTÉGÉ UNE FOIS REMPLI

FOSS No – *N° du SSOBL*

Surname – *Nom de famille* Given Names – *Prénom(s)* File No – *N° de reference*

Date of Birth – *Date de naissance* (D–J M Y–A) Country of Birth – *Pays de naissance* Country of Citizenship – *Pays de citoyenneté*

Accompanying Dependents – Attach separate sheet, if necessary
Personnes à charge accompagnant l'intéressé – Joindre une feuille distincte, au besoin

Family Name *Nom de famille*	Given Names *Prénom(s)*	File No *N° de reference*	Date, Place and Country of Birth *Date, lieu et pays de naissance*	M	F
				☐	☐
				☐	☐
				☐	☐
				☐	☐
				☐	☐
				☐	☐

The nearest representative of your government is:

Le représentant de votre gouvernement le plus près est :

APPLICABLE TO PERSONS ARRESTED OR DETAINED:

If you so request, an Immigration Officer will inform the nearest representative of your government that you have been arrested or detained. Any communication addressed by you to the nearest representative of your government will be forwarded by an Immigration Officer without delay. Your government representative will not be contacted at this time if you do not request it.

Do you want your government representative to be informed of your arrest or detention? ☐ Yes ☐ No

À L'INTENTION DES PERSONNES ARRÊTÉES OU MISES SOUS GARDE :

Si vous en faites la demande, un agent d'immigration informera le représentant de votre gouvernement le plus près du fait que vous avez été arrêté(e) ou mis(e) sous garde. Toute communication de votre part à l'intention de ce dernier sera transmise sans retard par l'agent d'immigration. Le représentant de votre gouvernement ne sera pas informé de la situation, pour l'instant, si vous ne faites pas de demande à cette fin.

Voulez-vous que le représentant de votre gouvernement soit informé de votre arrestation ou de votre mise sous garde ? ☐ *Oui* ☐ *Non*

SUBSECTION 30 OF THE IMMIGRATION ACT PROVIDES AS FOLLOWS:

"Every person with respect to whom an inquiry is to be held shall be informed of the person's right to obtain the services of a barrister or solicitor or other counsel and to be represented by any such counsel at the inquiry and shall be given a reasonable opportunity, if the person so desires, to obtain such counsel at the person's own expense."

Counsel need not necessarily be a lawyer. It may be any person, organization or society interested in your welfare.

Your right to counsel may be exercised at any time before or during immigration inquiry proceedings.

If you cannot afford legal counsel, access to legal aid may be made available to you.

LE PARAGRAPHE 30 DE LA LOI SUR L'IMMIGRATION PRESCRIT QUE:

"L'intéressé doit être informé qu'il a le droit de se faire représenter par un avocat ou un autre conseiller et se voir accorder la possibilité de le choisir, à ses frais."

Il n'est pas nécessaire que ce conseiller soit avocat; vous pouvez choisir une personne, le représentant d'un organisme ou d'une société qui s'intéresse à votre bien-être."

Vous pouvez vous prévaloir de votre droit de recourir aux services d'un conseiller en tout temps, avant ou pendant l'enquête de l'immigration.

Si vous n'êtes pas en mesure de payer le coût des services d'un avocat, vous pouvez avoir accès à l'aide juridique.

RECEIPT ACKNOWLEDGED – *REÇU*

....
Date Signature of Person Concerned – *Signature de la personne concernée*

I ..... solemnly declare that I have faithfully and accurately interpreted in the ..... language the information provided above. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

See reverse of copy 1 for Privacy Statemet

Je, ... , déclare solennellement avoir interprété fidèlement et exactement en ..... les renseignements indiqués ci-dessus. Je fais cette déclaration solennelle croyant en conscience qu'elle est vraie et sachant qu'elle a la même force et les mêmes effets que si elle était faite sous serment.

Voir au verso de la copie 1 l'énoncé sur la protection des renseignements personnels.

.....
Signature of Person Making Declaration – *Signature du déclarant*

Declared before me .....
at .....
This ..... day of ..... 19 .....

Déclaré devant moi .....
à .....
ce ..... *jour de* ..... 19 .....

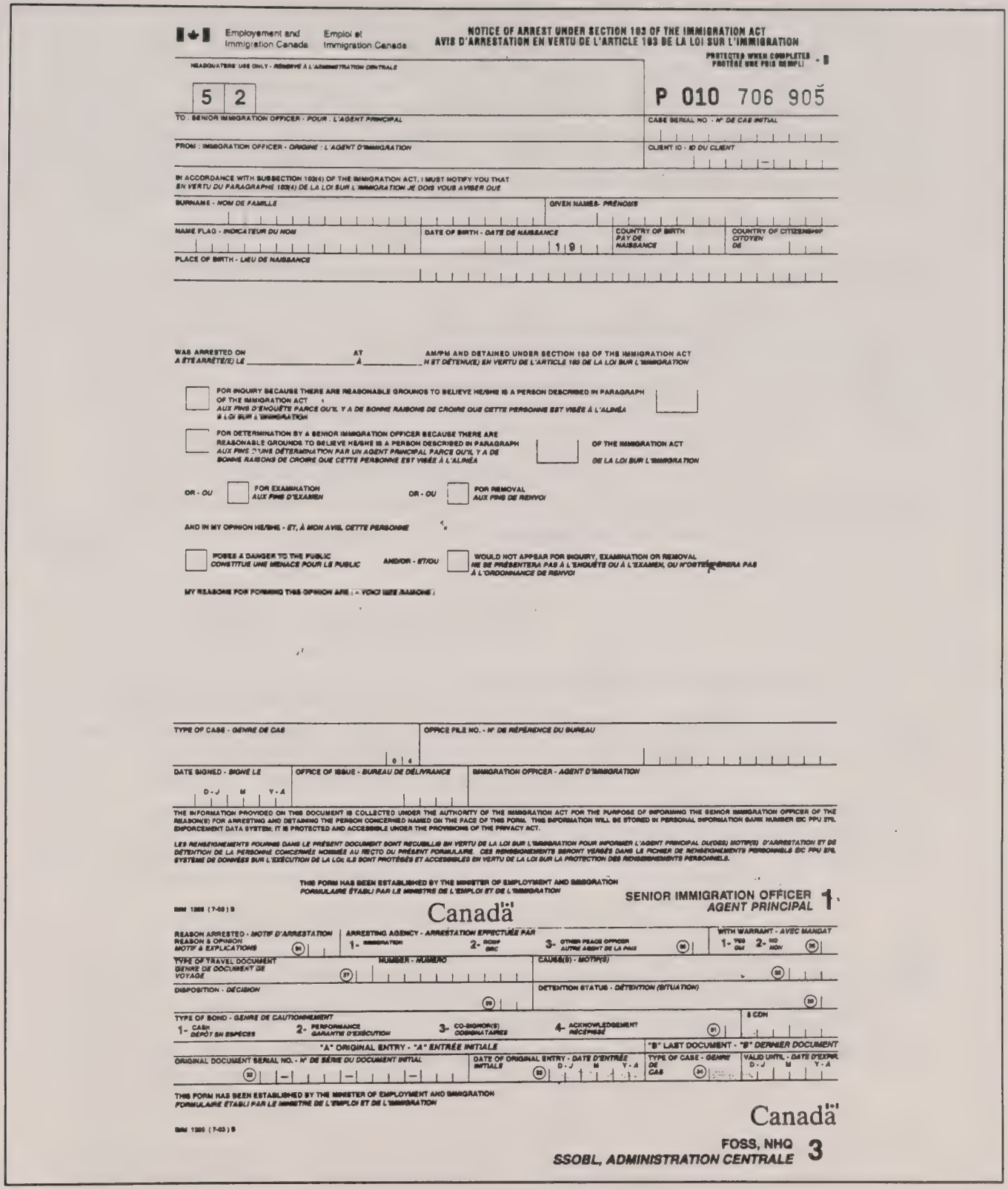
.....
Signature of Authorized Officer – *Signature de l'agent autorisé*

IMM 0689 (9-93) B

Canada

APPENDIX E

SAMPLE OF IMM 1285 (7–93) B – NOTICE OF ARREST UNDER SECTION 103 OF THE *IMMIGRATION ACT*



Employment and Immigration Canada / Emploi et Immigration Canada

NOTICE OF ARREST UNDER SECTION 103 OF THE IMMIGRATION ACT
AVIS D'ARRESTATION EN VERTU DE L'ARTICLE 103 DE LA LOI SUR L'IMMIGRATION

HEADQUARTERS' USE ONLY - RÉSERVÉ À L'ADMINISTRATION CENTRALE

5 2

PROTECTED WHEN COMPLETED / PROTÉGÉ UNE FOIS REMPLI

P 010 706 905

TO : SENIOR IMMIGRATION OFFICER - POUR : L'AGENT PRINCIPAL

CASE SERIAL NO - N° DE CAS INITIAL

FROM : IMMIGRATION OFFICER - ORIGINE : L'AGENT D'IMMIGRATION

CLIENT ID - ID DU CLIENT

IN ACCORDANCE WITH SUBSECTION 103(4) OF THE IMMIGRATION ACT, I MUST NOTIFY YOU THAT
EN VERTU DU PARAGRAPHE 103(4) DE LA LOI SUR L'IMMIGRATION JE DOIS VOUS AVISER QUE

SURNAME - NOM DE FAMILLE

GIVEN NAMES - PRÉNOMS

NAME FLAG - INDICATEUR DU NOM

DATE OF BIRTH - DATE DE NAISSANCE 1 9

COUNTRY OF BIRTH - PAY DE NAISSANCE

COUNTRY OF CITIZENSHIP - CITOYEN DE

PLACE OF BIRTH - LIEU DE NAISSANCE

WAS ARRESTED ON / A ÉTÉ ARRÊTÉ(E) LE _____ AT / À _____ AM/PM AND DETAINED UNDER SECTION 103 OF THE IMMIGRATION ACT / ET DÉTENU(E) EN VERTU DE L'ARTICLE 103 DE LA LOI SUR L'IMMIGRATION

☐ FOR INQUIRY BECAUSE THERE ARE REASONABLE GROUNDS TO BELIEVE HE/SHE IS A PERSON DESCRIBED IN PARAGRAPH ☐ OF THE IMMIGRATION ACT
AUX FINS D'ENQUÊTE PARCE QU'IL Y A DE BONNE RAISONS DE CROIRE QUE CETTE PERSONNE EST VISÉE À L'ALINÉA ☐ DE LA LOI SUR L'IMMIGRATION

☐ FOR DETERMINATION BY A SENIOR IMMIGRATION OFFICER BECAUSE THERE ARE REASONABLE GROUNDS TO BELIEVE HE/SHE IS A PERSON DESCRIBED IN PARAGRAPH ☐ OF THE IMMIGRATION ACT
AUX FINS D'UNE DÉTERMINATION PAR UN AGENT PRINCIPAL PARCE QU'IL Y A DE BONNE RAISONS DE CROIRE QUE CETTE PERSONNE EST VISÉE À L'ALINÉA ☐ DE LA LOI SUR L'IMMIGRATION

OR - OU ☐ FOR EXAMINATION / AUX FINS D'EXAMEN OR - OU ☐ FOR REMOVAL / AUX FINS DE RENVOI

AND IN MY OPINION HE/SHE - ET, À MON AVIS, CETTE PERSONNE

☐ POSES A DANGER TO THE PUBLIC / CONSTITUE UNE MENACE POUR LE PUBLIC AND/OR - ET/OU ☐ WOULD NOT APPEAR FOR INQUIRY, EXAMINATION OR REMOVAL / NE SE PRÉSENTERA PAS À L'ENQUÊTE OU À L'EXAMEN, OU N'OBTEMPÉRERA PAS À L'ORDONNANCE DE RENVOI

MY REASONS FOR FORMING THIS OPINION ARE : - VOICI MES RAISONS :

TYPE OF CASE - GENRE DE CAS

OFFICE FILE NO. - N° DE RÉFÉRENCE DU BUREAU

DATE SIGNED - SIGNÉ LE D - J M Y - A

OFFICE OF ISSUE - BUREAU DE DÉLIVRANCE

IMMIGRATION OFFICER - AGENT D'IMMIGRATION

THE INFORMATION PROVIDED ON THIS DOCUMENT IS COLLECTED UNDER THE AUTHORITY OF THE IMMIGRATION ACT FOR THE PURPOSE OF INFORMING THE SENIOR IMMIGRATION OFFICER OF THE REASON(S) FOR ARRESTING AND DETAINING THE PERSON CONCERNED NAMED ON THE FACE OF THIS FORM. THIS INFORMATION WILL BE STORED IN PERSONAL INFORMATION BANK NUMBER IEC PPU 270, ENFORCEMENT DATA SYSTEM; IT IS PROTECTED AND ACCESSIBLE UNDER THE PROVISIONS OF THE PRIVACY ACT.

LES RENSEIGNEMENTS FOURNIS DANS LE PRÉSENT DOCUMENT SONT RECUEILLIS EN VERTU DE LA LOI SUR L'IMMIGRATION POUR INFORMER L'AGENT PRINCIPAL DU(DES) MOTIF(S) D'ARRESTATION ET DE DÉTENTION DE LA PERSONNE CONCERNÉE NOMMÉE AU RECTO DU PRÉSENT FORMULAIRE. CES RENSEIGNEMENTS SERONT VERSÉS DANS LE FICHIER DE RENSEIGNEMENTS PERSONNELS IEC PPU 270, SYSTÈME DE DONNÉES SUR L'EXÉCUTION DE LA LOI; ILS SONT PROTÉGÉS ET ACCESSIBLES EN VERTU DE LA LOI SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS.

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

IMM 1285 (7-93) B

Canada

SENIOR IMMIGRATION OFFICER / AGENT PRINCIPAL 1

REASON ARRESTED - MOTIF D'ARRESTATION
REASON & OPINION / MOTIF & EXPLICATIONS (30)

ARRESTING AGENCY - ARRESTATION EFFECTUÉE PAR
1- IMMIGRATION 2- RCMP / GRC 3- OTHER PEACE OFFICER / AUTRE AGENT DE LA PAIX (30)

WITH WARRANT - AVEC MANDAT
1- YES / OUI 2- NO / NON (30)

TYPE OF TRAVEL DOCUMENT / GENRE DE DOCUMENT DE VOYAGE (27)

NUMBER - NUMÉRO

CAUSE(S) - MOTIF(S) (32)

DISPOSITION - DÉCISION (29)

DETENTION STATUS - DÉTENTION (SITUATION) (33)

TYPE OF BOND - GENRE DE CAUTIONNEMENT
1- CASH / DÉPOT EN ESPÈCES 2- PERFORMANCE / GARANTIE D'EXÉCUTION 3- CO-SIGNOR(S) / COSIGNATAIRES 4- ACKNOWLEDGEMENT / RÉCEPISSÉ (31)

$ CDN

"A" ORIGINAL ENTRY - "A" ENTRÉE INITIALE

"B" LAST DOCUMENT - "B" DERNIER DOCUMENT

ORIGINAL DOCUMENT SERIAL NO. - N° DE SÉRIE DU DOCUMENT INITIAL (32)

DATE OF ORIGINAL ENTRY - DATE D'ENTRÉE INITIALE D - J M Y - A (35)

TYPE OF CASE - GENRE DE CAS (34)

VALID UNTIL - DATE D'EXPIR. D - J M Y - A

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

IMM 1285 (7-93) B

Canada

FOSS, NHQ / SSOBL, ADMINISTRATION CENTRALE 3

APPENDIX F
FRAUDULENT DOCUMENTS

The number of people using fraudulent documentation to travel to Canada and other countries has increased markedly in recent years. Sophisticated technology has led to a proliferation of counterfeits, and nations must continually devise new methods to deter fraud. The Intelligence Division at National Headquarters has made formal arrangements with the Central Forensic Laboratory of the RCMP so that both organizations can gain necessary information from the scientific analysis of fraudulent documents. The Intelligence Division routinely forwards new types of counterfeits and alterations to the Central Forensic Laboratory for analysis. At the request of CIC officers the Intelligence Division will arrange to have other documents analyzed. The Intelligence Division also co–operates with several foreign immigration services in evaluating and spreading information about fraudulent documentation.

1. TERMINOLOGY

When you describe fraudulent documents, you should use the following standard terminology to reduce confusion.

Genuine documents used for fraudulent purposes may be obtained in a number of ways, and include:

- documents issued by authorities in an improper manner (corruptly or through extortion, for example)
- documents issued by government authorities to help revolutionary groups, terrorists and intelligence agents
- lost or stolen blanks which are completed with the biographical details of the user
- documents issued on the basis of false primary documentation, and
- documents given or sold by their rightful holder to another person, who then travels as an impostor.

Altered documents are genuine documents that have been unofficially altered or amended in any way, including:

- photo substitution
- erasure, modification or addition of information, and
- page substitution or removal.

Any unofficial alteration to a travel document, or to any visa or stamp placed in the document, renders it invalid for travel to, or status within, Canada.

Counterfeit documents are complete fabrications. They may be copies of genuine documents, or unauthorized or unrecognized fantasy documents. In recent years the availability of high–technology reproduction has caused an increase in the number of good–quality counterfeits.

Virtually any travel or identification document may be counterfeited, such as passports and travel documents; visas and residence permits; port stamps; Citizenship, health service, military and national identity cards; and birth certificates. In many cases genuine or altered documents may be accompanied by counterfeit visas, residence permits, port stamps and the like.

2. DISPOSING OF FRAUDULENT DOCUMENTS

You should use a variety of resources when determining whether a travel document is fraudulent, including the guidelines in chapter IC 3, the *Fraudulent Document Guide*, specimen documents and your own training and experience. Once you suspect or have determined that a document is fraudulent, seize it under A110(b) and A110(c), or A110(b) or A110(c). Note the disposition of all seized documents on the case file.

Send by secure means all known or suspected counterfeits, including documents containing counterfeit visas, stamps and so forth, as quickly as possible to:

Chief, Intelligence Division
9th Floor, Phase IV
Place du Portage
Hull, Québec K1A 0J9.

Include all available information regarding the circumstances of the seizure of the document, including:

- the date and place of seizure
- the name of the officer who seized it
- the name, citizenship and other details of the holder, and
- the reason for the seizure.

If you have seized an altered document that has not already appeared in the *Fraudulent Document Guide*, you should send it as quickly as possible to the Intelligence Division, with the same information as for counterfeits.

Retain all other documents on file, or dispose of them in accordance with section 49 of the *Immigration Regulations*.

The Intelligence Division will publish new types of counterfeits or alterations in the *Fraudulent Document Guide* or as *Alerts*.

If your CIC needs an analysis of a document for an inquiry or other purposes, send it (with the same information as for counterfeits) to the Intelligence Division, who in turn will send it to the RCMP Central Forensic Laboratory. The Intelligence Division will return a certified true copy of the document and the laboratory report to your CIC, which in most cases will suffice for an inquiry. If you need the original document back, clearly state in your accompanying report the date by which it will be required.

The Intelligence Division will retain documents that are not returned to the CIC as specimens for training, or will dispose of them in accordance with section 49 of the *Immigration Regulations*.

APPENDIX G
SAMPLE OF IMM 5041 (11–90) B – PROPERTY RECEIPT

Employment and Immigration Canada / Emploi et Immigration Canada

PROTECTED WHEN COMPLETED / *PROTÉGÉ UNE FOIS REMPLI* - B

PROPERTY RECEIPT
QUITTANCE DE BIENS

DATE	LOG — *REGISTRE*
FAMILY NAME — *NOM DE FAMILLE*	GIVEN NAME(S) — *PRÉNOM(S)*
DATE OF BIRTH — *DATE DE NAISSANCE* D/J M Y/A	CITIZENSHIP — *CITOYEN DE*

BAGGAGE AND EFFECTS — *BAGAGES ET BIENS PERSONNELS*

DESCRIPTION	NO./*N°*	COMMENTS/*REMARQUES*

CASH — *MONTANT EN ESPÈCES*

RECEIVED — *REÇU*	SIGNATURES
X 1.00 =	GUARD — *AGENT DE SÉCURITÉ*
X 2.00 =	DATE
X 5.00 =	DETAINEE — *DÉTENU*
X 10.00 =	DATE
X 20.00 =	
X =	
X COIN / *MONNAIE* = TOTAL	

WITHDRAWN — *RETIRÉ* (D/J M Y/A)	GUARD — *AGENT DE SÉCURITÉ*
X =	DATE
X =	DETAINEE — *DÉTENU*
X =	DATE
X =	
X =	
X =	
X COIN / *MONNAIE* = TOTAL	

RELEASED — *REMIS*	GUARD — *AGENT DE SÉCURITÉ*
X 1.00 =	DATE
X 2.00 =	DETAINEE — *DÉTENU*
X 5.00 =	DATE
X 10.00 =	
X 20.00 =	
X =	
X COIN / *MONNAIE* = TOTAL	

THE PERSONAL INFORMATION YOU PROVIDE ON THIS DOCUMENT IS COLLECTED UNDER THE AUTHORITY OF THE IMMIGRATION ACT FOR THE PURPOSE OF RECORDING AND VERIFYING THE PROPERTY AND MONEY THAT YOU POSSESS AT THE BEGINNING AND ENDING OF YOUR PERIOD OF DETENTION. IT IS PROTECTED BY THE PRIVACY ACT, IS ACCESSIBLE TO YOU AND WILL BE STORED IN PERSONAL INFORMATION BANK # EIC/P-PU-270 - *LES RENSEIGNEMENTS QUE VOUS FOURNISSEZ DANS LE PRÉSENT DOCUMENT SONT RECUEILLIS EN VERTU DE LA LOI SUR L'IMMIGRATION. CE DOCUMENT SERT À CONSIGNER LES BIENS ET L'ARGENT QUE VOUS POSSÉDEZ AU DÉBUT DE VOTRE DÉTENTION ET À EN FAIRE LA VÉRIFICATION À LA FIN. LES RENSEIGNEMENTS EN QUESTION SONT PROTÉGÉS PAR LA LOI SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS ET SONT VERSÉS AU FICHIER DE RENSEIGNEMENTS PERSONNELS N° EIC/P-PU-270 QUE VOUS POUVEZ PAR AILLEURS CONSULTER.*

I CERTIFY THAT THE ABOVE ITEMS WERE DELIVERED TO ME BY
JE CERTIFIE QUE LES ARTICLES CI-DESSUS M'ONT ÉTÉ REMIS PAR

SIGNATURE OF GUARD — *SIGNATURE DE L'AGENT DE SÉCURITÉ* | SIGNATURE OF DETAINEE — *SIGNATURE DU DÉTENU*

I ACKNOWLEDGE RECEIPT OF BAGGAGE, EFFECTS AND CASH LESS WITHDRAWALS FROM
J'ACCUSE RÉCEPTION DES BAGAGES, BIENS PERSONNELS ET MONTANT EN ESPÈCES (MOINS LES RETRAITS) DE

GUARD — *AGENT DE SÉCURITÉ* | DATE | SIGNATURE OF DETAINEE / *SIGNATURE DU DÉTENU*

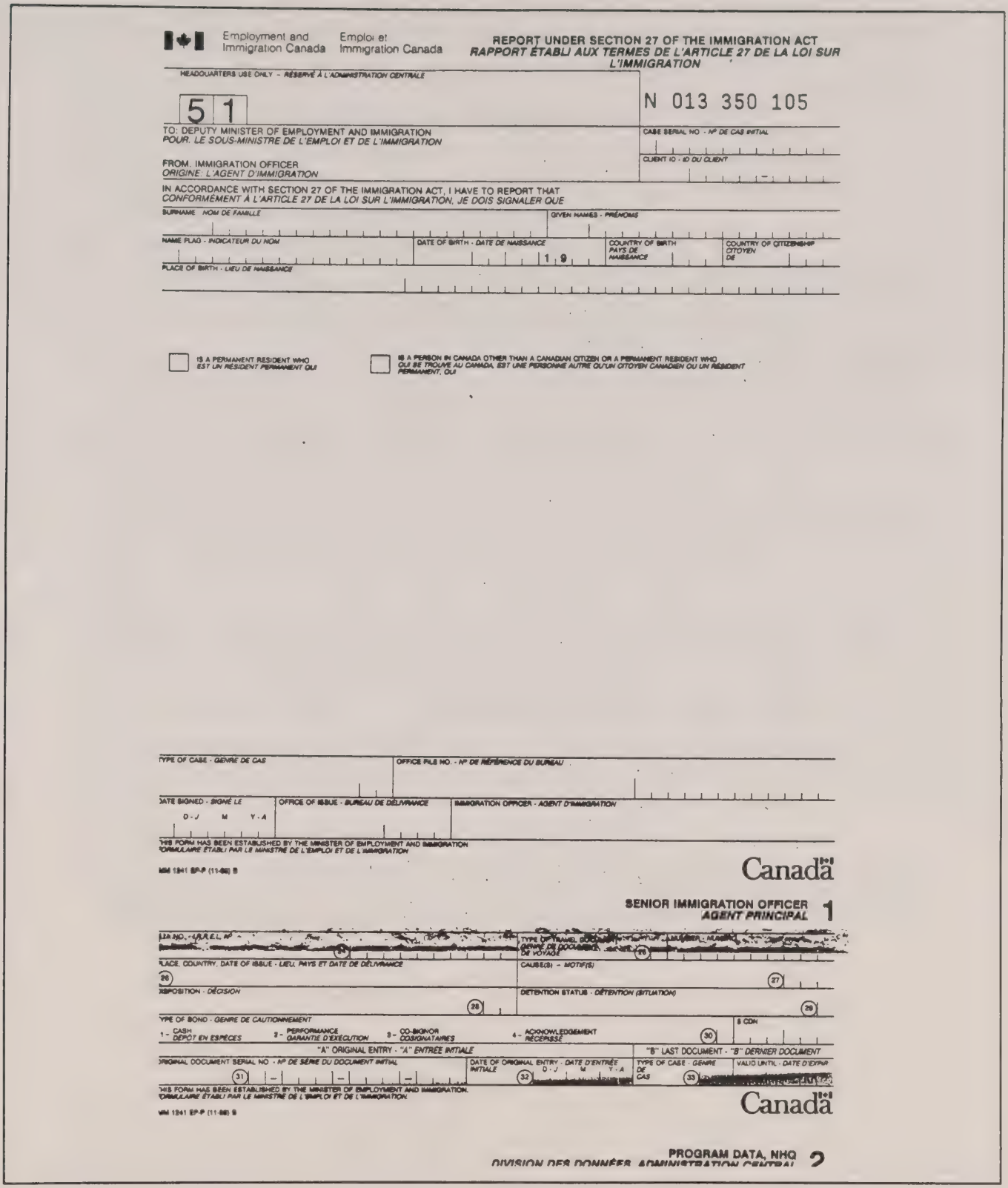
IMM 5041 (11-90)B

Canada

1 — SECURITY / *SÉCURITÉ*

APPENDIX H

SAMPLE IMM 1241 (11–88) B – REPORT UNDER SECTION 27 OF THE *IMMIGRATION ACT*



Employment and Immigration Canada / Emploi et Immigration Canada

REPORT UNDER SECTION 27 OF THE IMMIGRATION ACT
RAPPORT ÉTABLI AUX TERMES DE L'ARTICLE 27 DE LA LOI SUR L'IMMIGRATION

HEADQUARTERS USE ONLY – *RÉSERVÉ À L'ADMINISTRATION CENTRALE*

5 1

N 013 350 105

TO: DEPUTY MINISTER OF EMPLOYMENT AND IMMIGRATION
POUR: LE SOUS-MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

CASE SERIAL NO. - *N° DE CAS INITIAL*

CLIENT ID - *ID DU CLIENT*

FROM: IMMIGRATION OFFICER
ORIGINE: L'AGENT D'IMMIGRATION

IN ACCORDANCE WITH SECTION 27 OF THE IMMIGRATION ACT, I HAVE TO REPORT THAT
CONFORMÉMENT À L'ARTICLE 27 DE LA LOI SUR L'IMMIGRATION, JE DOIS SIGNALER QUE

SURNAME - *NOM DE FAMILLE*

GIVEN NAMES - *PRÉNOMS*

NAME FLAG - *INDICATEUR DU NOM*

DATE OF BIRTH - *DATE DE NAISSANCE*

1 9

COUNTRY OF BIRTH
PAYS DE NAISSANCE

COUNTRY OF CITIZENSHIP
CITOYEN DE

PLACE OF BIRTH - *LIEU DE NAISSANCE*

☐ IS A PERMANENT RESIDENT WHO
EST UN RÉSIDENT PERMANENT QUI

☐ IS A PERSON IN CANADA OTHER THAN A CANADIAN CITIZEN OR A PERMANENT RESIDENT WHO
QUI SE TROUVE AU CANADA, EST UNE PERSONNE AUTRE QU'UN CITOYEN CANADIEN OU UN RÉSIDENT PERMANENT, QUI

TYPE OF CASE - *GENRE DE CAS*

OFFICE FILE NO. - *N° DE RÉFÉRENCE DU BUREAU*

DATE SIGNED - *SIGNÉ LE* D - J M Y - A

OFFICE OF ISSUE - *BUREAU DE DÉLIVRANCE*

IMMIGRATION OFFICER - *AGENT D'IMMIGRATION*

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

IMM 1241 EP-P (11-88) B

Canada

SENIOR IMMIGRATION OFFICER 1
AGENT PRINCIPAL

(24) TRAVEL DOCUMENT - *DOCUMENT DE VOYAGE* (25)

PLACE, COUNTRY, DATE OF ISSUE - *LIEU, PAYS ET DATE DE DÉLIVRANCE* (26)

CAUSE(S) - *MOTIF(S)* (27)

DISPOSITION - *DÉCISION* (28)

DETENTION STATUS - *DÉTENTION (SITUATION)* (29)

TYPE OF BOND - *GENRE DE CAUTIONNEMENT*
1 - CASH *DÉPÔT EN ESPÈCES* 2 - PERFORMANCE *GARANTIE D'EXÉCUTION* 3 - CO-SIGNOR *COSIGNATAIRES* 4 - ACKNOWLEDGEMENT *RÉCEPISSÉ* (30)

$ CDN

"A" ORIGINAL ENTRY - *"A" ENTRÉE INITIALE*

"B" LAST DOCUMENT - *"B" DERNIER DOCUMENT*

ORIGINAL DOCUMENT SERIAL NO. - *N° DE SÉRIE DU DOCUMENT INITIAL* (31)

DATE OF ORIGINAL ENTRY - *DATE D'ENTRÉE INITIALE* D - J M Y - A (32)

TYPE OF CASE - *GENRE DE CAS* (33)

VALID UNTIL - *DATE D'EXPIR*

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION.
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION.

IMM 1241 EP-P (11-88) B

Canada

PROGRAM DATA, NHQ 2
DIVISION DES DONNÉES, ADMINISTRATION CENTRALE

APPENDIX I
OPERATING A CIC HOLDING ROOM

In operating a CIC holding room, the detention and escort officer or the designated officer is responsible for:

- preventing escapes
- maintaining order in the holding room by keeping constant control
- protecting detainees and IOs from assault
- ensuring that detainees' rights are respected, including guaranteeing the detainees' welfare, and
- safekeeping the detainees' papers and personal effects.

Operating and maintaining a holding room requires several basic rules:

- visitors, other than counsel, are prohibited. This prohibition is legal and proper as long as you do not interfere with the right of detainees to consult and be represented by counsel. Visitors have normal access to detainees at the immigration holding centre or provincial detention centre.
- detainees' counsel may see their clients at any time. Counsel may be legal or lay counsel, including family members. You should make every effort to provide a separate room. If there are no other detainees in the room, you may use the detention room.
- a holding room should contain no objects — such as glass and other sharp objects — that could easily be used by detainees to harm officers, other detainees or themselves.
- search detainees before taking them into the holding room. Detainees should not retain personal effects, and should surrender these items to the officer who retains them and provides a receipt for them. Take matches and other incendiary materials from detainees.
- search detainees in private after they have visited counsel, and before returning them to the holding room.
- do not hold in a CIC holding room anyone who is detained because he or she is deemed to be a danger to the public, except when the detainee is awaiting transportation to a detention centre.
- remove anyone who poses a threat in the holding room to a more secure detention centre.
- unless it is absolutely necessary, do not leave detainees unattended, and observe them regularly.
- the detention officer's supervisor should inform the office manager of a dangerous situation.
- inquiry scheduling must take into account the priority of detention cases to ensure a minimal waiting period.
- the supervisor should set minimum standards for the ratio between guards and detainees.
- where facilities permit, segregate certain detainees from others, such as women from men, and persons with deviant behaviour from others. If this segregation is not possible, give serious consideration to bringing detainees who should be segregated to the CIC at a different time from others.

APPENDIX J
STANDARD OPERATING PRINCIPLES FOR DETENTION CENTRES

As indicated in paragraph 12.5 of this chapter, the department leases facilities for the accommodation of detainees, with those in the metropolitan areas of Greater Toronto, Montreal and Vancouver, where there is the highest frequency of detentions, used on an everyday basis. In other parts of the country where the need to detain is not nearly as frequent, similar facilities are leased on an "as needed" basis. Both types are shown at paragraph 6 following. Occasionally, as indicated in paragraphs 12.5, 12.7, and 12.8, immigration detainees may be held in municipal or regional correction centres of the type shown at Appendix K. The length of detention time may be affected by delays in removals, lengthy appeal processes, suitability of available bondspersons, and the degree of community involvement.

The standard operating principles in this appendix apply only to those facilities where the department leases space, such as hotel rooms. Although we may not impose our standards on other jurisdictions, we encourage regional IOs to provide receiving officials with the principles.

The principles provide a broad framework for administering the Act in an immigrant station. Legislative constraints prescribe certain activities: for example, the requirement to bring a detainee before an adjudicator after 48 hours, and then at least once during *the seven days immediately following the expiry of the 48–hour period and thereafter at least once during each 30–day period following each previous review* [A103(6)]. Although the day–to–day operations of these facilities are not prescribed by law, the department is committed to provide a satisfactory setting for persons detained under the Act. These principles are not designed to be inflexible instruments, but rather practical tools for support and guidance in implementing local procedures.

1. DUTIES OF SEURITY STAFF

The IO at the detention centre, sometimes called the resident detention officer, is the senior officer, final authority and decision–maker. The IO is usually present for a regular day–time shift. In the absence of an IO (during the night, for example) the security supervisor may contact an available IO at the nearest CIC for guidance or a decision.

The duties of security staff include:

- admitting and releasing detainees
- supervising detainees
- taking control of and accepting responsibility for luggage and other belongings of detainees, using the property receipt (form IMM 5041; see APPENDIX G)
- ordering meals
- completing reports
- escorting and transporting detainees, and
- other custodial and security duties.

1.1 Training

Previous local experience may immigration officials to decide that employees of security companies who provide staff to detention centres must successfully complete a training program. All security staff must be trained in first aid, registration of property, report writing, legal powers, and bomb threats. Other relevant subjects and skills include conduct, ethics, tact and diplomacy, public relations and positive attitudes toward other cultures.

1.2 Handling disruptive behaviour

There is no disciplinary policy at detention centres. Disruptions in normal routine may take the form of behaviour that ranges from mildly disruptive to violent. For merely disruptive behaviour, first isolate the person to assess the situation. If the incident can be resolved on the spot, there is no need for further action. Then write a report of the incident for follow–up supervision.

In the case of a violent disturbance, or any incident where the IO decides that the person should be in a more secure environment, such as a correctional centre, the IO will arrange a transfer. The basis for the decision could be the IO's belief that the person may try to endanger himself or herself or others, or that the person has the potential to escape custody (see section 9.6 of chapter 10).

2. RIGHTS AND BEHAVIOUR OF DETAINEES

As persons in Canada, detainees have the same protection under the *Canadian Charter of Rights and Freedoms* as do all Canadians, including:

- the right to counsel, for which the Commission attempts to provide privacy
- a right to available medical services
- a right to proper meals and lodging
- the right to associate, and
- the right to practice religion.

Rights are accorded fairly and with equal access, but within the necessarily controlled environment.

Detainees are free to report any complaints about the quality of care to the IO. The IO will examine complaints, and if he or she deems them to be justified, provides a remedy.

We expect detainees to obey the rules of the detention centre and to conduct themselves in an orderly fashion. The department recognizes that persons who share the same language or cultural background may be less anxious if they share a room. The responsible officer should make efforts to accommodate such a request. Sharing rooms by persons of similar backgrounds normally causes no difficulty. Do not permit disruptive behaviour that results from shared accommodation or close proximity to friends or associates.

3. ACCOMMODATION REQUIREMENTS

While detainees are in the jurisdiction of an immigration detention facility, the responsible officer should provide them with a reasonable level of care that will maintain a state of good health and well being, including:

- nutritious meals
- exercise facilities
- sleeping rooms that are not overcrowded or poorly ventilated
- a reasonable degree of privacy, and
- health–care service as described in section 4. of this appendix.

When the responsible officer is assessing contractors' bids for tender, he or she must take the requirements in the nine following subsections into consideration.

3.1 Meals

The menu should provide a minimum of two choices daily for breakfast, lunch and dinner. Rotate the daily menu plan so that the same choices are not offered on consecutive days. Meals should follow *Canada's Food Guide*, published by Health and Welfare Canada. Arrange special meals for infants and children, persons on restricted diets based on medical or religious requirements, and any other person who establishes that a special dietary need exists. The department recommends either that the responsible officer hire a dietitian to provide professional advice if the population warrants, or that the meal service be monitored to ensure that it meets nutritional needs.

Serve meals in a common area. Seating arrangements may be flexible, such as seating family members together. Use meal authorizations (form IMM 5026; see APPENDIX O).

3.2 Exercise

The responsible officer must give persons who are in detention for a continuous period of seven days or more daily access to indoor and outdoor exercise. Provide controlled space outdoors that is large enough to allow detainees to walk about or to play some sports. The space must be useable in all seasons, because detainees must have access to fresh air daily. *This space is a basic requirement for a contract.* Allow a minimum of one–half an hour for exercise.

For persons who are in detention for short periods of a day or so, accommodate requests to go outside to this area, where feasible.

A common room which is designated for serving meals may be converted into an indoor exercise room. Evaluate the exercise needs of residents when budgeting for equipment. Decide locally on the kind of equipment and the amounts to be spent on equipment. For example, indoor equipment could include a stationary bicycle or a sit–up bench, and for outside exercise, a basketball net and ball or a soccer ball.

Not every detainee will wish to participate in an exercise activity, but give everyone the opportunity to walk about and receive some fresh air.

3.3 Room configuration

The department does not approve of overcrowding. Plan to place two persons, or a maximum of three, in one bedroom. Consider family needs, so that parents and children, or a husband and wife, can be together if possible.

Occasionally the number of inadmissible persons arriving in Canada and who are subsequently detained may suddenly increase. The responsible officer must make immediate efforts to relieve temporary overcrowding, such as seeking responsible guarantors who can provide other shelter.

3.4 Access to counsel

Immigration detainees, whether refugee claimants or not, have the right to counsel and the unrestricted use of a telephone to reach counsel for advice. We recommend that the responsible officer designate a private area for counsel to visit with the client. This area can be an unoccupied room, or part of the common meal or exercise room, with a room divider for privacy.

3.5 Access to religious representatives

Inform all detainees at the start of their detention that, if they wish, they may contact a representative of their religion, and arrange visits as circumstances permit. Use the space set aside for visits by counsel. Local religious groups may post lists of names, telephone numbers and religious affiliations in the facility.

3.6 Privacy

The detention centre is not a jail, and the detainees are not prisoners. Nevertheless the responsible officer must institute a degree of security to control the detainees' movements. Detainees may conduct private conversations with each other in their rooms. Remove any locks on the doors. If a door is solid, the detainee should leave it slightly ajar at all times. An open door allows security guards to conduct their routine patrols more simply.

3.7 Telephones

Allow detainees to contact counsel by telephone. Drawn up schedules to allow detainees to make other local phone calls. The schedule should ensure fair and equal access for all detainees.

3.8 Reading material

Detainees should have access to reading material as a form of recreation. Interested volunteer groups could appropriately provide material in the languages of the detainees. Regional officials should contact agencies that have previously provided support to detainees to get their help in providing material. Ask the groups, for example, to order periodicals or magazines, and to co–ordinate lending privileges from local libraries. Regions that already provide newspapers, magazines and books may continue this practice on a limited basis.

3.9 Ventilation

Maintain a satisfactory rate of air exchange and circulation year–round. Safeguards may have to be installed to prevent tampering with the climate–control system. Check the system regularly to make sure that it is working well.

4. MEDICAL CARE

Decide locally whether to contract physicians and nurses to attend detention centres regularly. If medical staff do attend regularly, establish a schedule for detainees to obtain advice and treatment. In centres without resident medical staff, transport detainees who need to be examined by a physician to the nearest hospital. In urgent cases, bring medical care directly to the centre, by ambulance if need be.

4.1 Admission to a holding centre

There is no need for a medical examination either at the point when the detainee is admitted to the centre, or at some pre–determined point, such as one week later. Meet each detainee's needs as required.

If a detainee taking a prescribed medication is admitted, he or she must give the medication to the security supervisor. The supervisor records the drug, stores it for safekeeping, issues it to the detainee according to the label, and records each dose.

4.2 Treating illness or injury and dispensing drugs

If a detainee complains of illness or incurs an injury, the IO decides whether professional medical advice is required. If the injury is minor, the security supervisor or a member of the staff may administer first aid: for the treatment of cuts and bruises, for example. If there is any doubt whatsoever, seek professional advice immediately.

If medication is prescribed for a detainee after admission, the security supervisor stores it, issues it, and records each dose. Supervisory staff may issue a non–prescription household drug such as Aspirin. With both prescription and non–prescription drugs, exercise caution to ensure the detainee's safety. For example, if a detainee complains of a headache, check his or her records before issuing an Aspirin to verify whether the person is taking any other medication. Even Aspirin can be dangerous in combination with certain other prescription drugs.

Security staff and IOs must confirm any doubtful situations with medical authorities. Consult medical authorities before giving any medication whatsoever, prescription or non–prescription, to children of detainees.

4.3 Special services

If a detainee complains of a physical ailment that appears to require the services of a specialist — a dentist or ophthalmologist, for example — the IO will assess the need and decide whether to obtain the services.

If a detainee exhibits behaviour that is disruptive or violent, or symptomatic of a mental instability, the security staff must isolate the person from the rest of the detainees. The IO will decide whether the person poses a danger to himself or herself or others if he or she remains at the centre. The IO has the authority to order the person transferred to a correctional facility where psychiatric services are more readily available.

If a detainee asks for the services of a mental–health professional, such as a psychologist or psychiatrist, the IO will decide whether to seek this type of advice. Counselling services may already be available through a community group that provides aid to detainees.

5. LANGUAGE CONSIDERATIONS

Post instructions about the subjects covered in sections 2., 3. and 4. above in English, French and as many foreign languages as possible, considering the regular flow of the clientele.

In the same languages, post separate and clearly visible notices concerning fire evacuation procedures. As an added safety measure for those who cannot read, each detention facility in Ontario, Québec and British Columbia should also arrange for taped messages which should be repeated at each meal.

6. IMMIGRATION HOLDING CENTRES

a) Leased For Everyday Use

Québec Region

Centre de prévention
6177 rue St–Jacques ouest
Montréal, Québec
H4B 1T7

Tel.: 514–283–0883
Fax: 514–496–6402

Ontario Region

Immigration Holding Centre
Celebrity Inn
6355 Airport Road
Mississauga, Ontario
L4V 1E4

Tel.: 416–677–7331, ext. 156
Fax: 416–676–7407

Immigration Holding Centre
Cairn Croft Motel
6400 Lundy's Lane
Niagara Falls, Ontario
L2G 1T6

Tel.: 416–374–3857

British Columbia and Yukon Region

Immigration Holding Centre
Airport Skyline
3031 No. 3 Road
Richmond, British Columbia
V6X 2B6

Tel.: 604–666–1985
Fax: 604–666–7349

b) Leased As And When Necessary

Atlantic Region

Gander Hotel, Gander, and Hotel St. John's, St. John's, Nfld.
Waverly Inn, Halifax, N.S.
Fredericton Inn, Fredericton, N.B.
Beauséjour Hotel, Moncton, N.B.
Holiday Inn, Saint John, N.B.
Panorama Motel, Woodstock, N.B.
Praga Hotel, Edmundston, N.B.

Quebec Region

Canadian Forces Base, Farnham
Canadian Forces Base, Saint–Hubert
Le Château de L'Aéroport, Mirabel

Ontario Region

Plaza Hotel, Rexdale
Beacon Arms Hotel, Ottawa
Holiday Inn, Windsor
Skyline Brock Hotel, Niagara Falls
Village Inn, Niagara Falls [summer months only]

Prairies/NWT Region

Airliner Motor Hotel, Winnipeg, Man.
Airport Motor Hotel, Winnipeg, Man.
King George Hotel, Saskatoon, Sask.
Plains Motor Hotel, Regina, Sask.
Airlines Hotel, Calgary, Alta.
Travelodge Airport Inn, Calgary, Alta.
Ambassador Motel, Edmonton, Alta.
Denham Inn, Leduc, Alta.
Relax Inns, Leduc, Alta.

APPENDIX K
FEDERAL AND PROVINCIAL INSTITUTIONS

1. NEWFOUNDLAND REGION

CIC — Gander

Bishops Falls Correctional Centre
P.O. Box 880
Bishops Falls, Newfoundland
A0H 1C0

Newfoundland and Labrador Correctional Centre for Women
P.O. Box 660
Stephenville, Newfoundland
A2N 3B5

West Coast Correctional Centre
P.O. Box 660
Stephenville, Newfoundland
A2N 3B5

Labrador Correctional Centre
P.O. Box 3018
Happy Valley – Goose Bay, Newfoundland
A0P 1E0

RCMP Detachment
34 Elizabeth Drive
Gander, Newfoundland
A1V 1G6

CIC — St. John's

Her Majesty's Penitentiary
P.O. Box 5459
St. John's, Newfoundland
A1C 5W4

Salmonier Correctional Institution
Salmonier Line
P.O. Box 5459
St. John's, Newfoundland
A1C 5W4

Clarenville Correctional Centre
P.O. Box 1030
Clarenville, Newfoundland
A0E 1J0

2. NOVA SCOTIA REGION

CIC — Halifax

Halifax Correctional Centre
P.O. Box 10
Lower Sackville, Nova Scotia
B4C 2S8

CIC — New Glasgow

Springhill Institution
Springhill, Nova Scotia
B0M 1X0

Cumberland Correction Centre
1 Lawrence Street
Amherst, Nova Scotia
B4H 3G4

Guysborough Correctional Centre
P.O. Box 209
Guysborough, Nova Scotia
B0H 1N0

Antigonish Correctional Centre
P.O. Box 1748
Antigonish, Nova Scotia
B2G 2M5

Colchester Correction Centre
P.O. Box 921
Truro, Nova Scotia
B2N 5G7

CIC — Kentville

Kings Correctional Centre
P.O. Box 124
Waterville, Nova Scotia
B0P 1V0

Lunenburg Correctional Centre
R.R. 2
Lunenburg County, Nova Scotia
B0J 2C0

CIC — Sydney

Cape Breton Correctional Centre
R.R. 4
Sydney, Nova Scotia
B1P 5R3

CIC — Yarmouth

Yarmouth Correctional Centre
459 Main Street
Yarmouth, Nova Scotia
B5A 1G9

3. PRINCE EDWARD ISLAND REGION

CIC — Charlottetown

Sleepy Hollow Correctional Centre
P.O. Box 2710
Charlottetown, Prince Edward Island
C1A 8C3

Kings County Jail
Georgetown, Prince Edward Island
C0A 1L0

Prince County Jail
P.O. Box 2020
Summerside, Prince Edward Island
C1N 4M1

4. NEW BRUNSWICK REGION

CIC — Bathurst

Atlantic Institution
P.O. Box 74
Renous, New Brunswick
E0C 1X0

Dalhousie Provincial Jail
P.O. Box 1150
Dalhousie, New Brunswick
E0K 1B0

CIC — Edmundston

St. Hilaire Correctional Centre
R.R. 1
Edmundston, New Brunswick
E3V 3K3

CIC — Moncton

Dorchester Penitentiary
Drawer "A"
Dorchester, New Brunswick
E0A 1M0

Moncton Detention Centre
45 Commercial Street
Moncton, New Brunswick
E1C 1A2

Richibucto Provincial Jail
Richibucto, New Brunswick
E0A 2M0

Westmorland Institution
P.O. Box 130
Dorchester, New Brunswick
E0A 1M0

Dorchester Provincial Jail
P.O. Box 100
Dorchester, N.B.
E0A 1M0

CIC — Fredericton

Fredericton Provincial Jail
668 Brunswick Street
Fredericton, New Brunswick
E3B 1H5

CIC — Saint John

Saint John Regional Correctional Centre
R.R. 3
Old Black River Road
Saint John, New Brunswick
E2L 3W3

CIC — Woodstock

Woodstock Provincial Jail
Maple Street
Woodstock, New Brunswick
E0J 2B0

Carlingford Provincial Jail
R.R. 3
Andover, New Brunswick
E0J 1V0

5. QUÉBEC REGION

CIC — Chicoutimi

Centre de détention
237 rue Price est
Chicoutimi, Québec
G7H 2E5

Centre de détention
750 boulevard St–Joseph
Roberval, Québec
G8H 2L5

CIC — Hull

Établissement de détention de Hull
75 rue St–François
Hull, Québec
J9A 1B4

Établissement de détention de Mont–Laurier
663 carré Laurier
Mont–Laurier, Québec
J9L 2W4

Établissement La Macaza
321 chemin de l'Aéroport
La Macaza, Québec
J0T 1R1

Centre de détention
851 3e rue ouest
Amos, Québec
J9T 2T4

CIC — Exécution de la Loi

Établissement Leclerc
400 Montée St–François
St–Vincent–de–Paul
Laval, Québec
H7C 1S7

Établissement Montée St–François
200 Montée St–François
St–Vincent–de–Paul
Laval, Québec
H7C 1S5

Établissement Laval
180 Montée St–François
St–Vincent–de–Paul
Laval, Québec
H7C 1S5

Centre de détention Laval (Annexe Bordeaux)
200 Montée St–François
St–Vincent–de–Paul
Laval, Québec
H7C 1S5

Centre Fédéral de Formation
6099 boulevard Lévesque
St–Vincent–de–Paul
Laval, Québec
H7C 1P1

Institut Phillipe Pinel
10905 boulevard Henri–Bourassa est
Montréal, Québec
H1C 1H1

Centre de prévention
1701 rue Parthenais
Montréal, Québec
H2K 2S7

Maison Tanguay
11000 rue Tanguay
Montréal, Québec
H3L 3H2

Prison de Montréal (Bordeaux)
800 boulevard Gouin ouest
Montréal, Québec
H3L 1K7

CIC — Monteregie

Service correctionel du Canada
Établissement de Cowansville
R.R. 1
Cowansville, Québec
J2K 3G6

Centre de détention
916 rue Principale
Cowansville, Québec
J2K 1K1

Centre de détention
75 rue Montcalm
Valleyfield, Québec
J6T 2C8

CIC — Longueuil

Centre de détention
16400 rue Mercure
Saint–Hyacinthe, Québec
J2T 2Y5

CIC — Mirabel

Établissement Ste–Anne–des–Plaines
246 Montée Gagnon
Ste–Anne–des–Plaines, Québec
J0N 1H0

Prison de St–Jérôme
Centre de détention et de prévention
40 Montée Meunier
St–Jérôme, Québec
J7Z 5V3

Établissement Archambault
242 Montée Gagnon
Ste–Anne–des–Plaines, Québec
J0N 1H0

CIC — Québec

Centre de détention
Rue Principale
New–Carlisle, Québec
G0C 1Z0

Centre de détention
500 rue de la Faune
C.P. 7130
Charlesbourg, Québec
G1G 3G4

Centre de détention de Percé
Percé, Québec
G0C 2L0

Centre de détention de Rimouski
181 rue de la Cathédrale
C.P. 490
Rimouski, Québec
G5L 7C5

Centre de détention de Rivière–du–Loup
33 rue de la Cour
Rivière–du–Loup, Québec
G5R 1J1

Centre de détention de Donnacona
1538, Route 138
Donnacona, Québec
G0A 1T0

CIC — Sept–Îles

Centre de détention de Sept–Îles
425 boulevard Laure
Sept–Îles, Québec
G4R 1X6

Centre de détention de Baie–Comeau
73 rue Mance
Baie–Comeau, Québec
G4Z 1N1

Service correctionnel du Canada
Établissement de Port–Cartier
C.P. 7070
Chemin de l'Aéroport
Port–Cartier, Québec
G5B 2W2

CIC — Sherbrooke

Établissement Drummond
Service correctionnel du Canada
2025 Jean de Bréboeuf
Drummondville, Québec
J2B 7Z6

Centre de détention
1055 rue Talbot
Sherbrooke, Québec
J1G 2P3

Centre de réhabilitation
4 rue Western
C.P. 1150
Waterloo, Québec
J0E 2N0

CIC — Trois–Rivières

Établissement de détention
450 St–Louis
C.P. 162
Joliette, Québec
J6E 3Z3

Établissement de détention
400 boulevard Poliquin
C.P. 529
Sorel, Québec
J3P 5N9

Établissement de détention
7600 boulevard Parent
Trois–Rivières, Québec
G9A 5E1

6. ONTARIO REGION

CIC — Ottawa

County Jail Cornwall
Box 1418
7 Water Street West
Cornwall, Ontario
K6H 5V5

L'Orignal Jail
Court House, Box 345
1023 Queen Street
L'Orignal, Ontario
K0B 1K0

CIC — Fort Frances

Fort Frances District Jail
Box 189
310 Nelson Street
Fort Frances, Ontario
P9A 3M6

Kenora District Jail
1430 River Street
Kenora, Ontario
P9N 1K5

CIC — Guelph

Wellington Detention Centre
P.O. Box 870
588 Stone Road East
Guelph, Ontario
N1H 6M6

Guelph Correctional Centre
P.O. Box 3600
785 York Road
Guelph, Ontario
N1H 6P3

CIC — Hamilton

Hamilton Wentworth Detention Centre
165 Barton Street East
Hamilton, Ontario
L8L 2W6

Burtch Correction Centre
P.O. Box 940
Brantford, Ontario
N3T 5Z6

CIC — Kingston

Bath Institution
P.O. Box 1550
Highway 33
Kingston, Ontario
K0H 1G0

Collins Bay Institution
P.O. Box 190
455 Bath Road
Kingston, Ontario
K7L 4V9

Frontenac Institution
P.O. Box 190
455 Bath Road
Kingston, Ontario
K7L 4V9

Joyceville Institution
Highway 15
P.O. Box 880
Kingston, Ontario
K7L 4X9

Kingston Penitentiary
P.O. Box 880
Kingston, Ontario
K7L 4V7

Millhaven Institution
P.O. Box 280
Bath, Ontario
K7L 4H6

Pittsburg Institution
Highway 15
P.O. Box 880
Kingston, Ontario
K7L 4X9

Prison for Women
P.O. Box 515
Kingston, Ontario
K7L 4V7

Quinte Regional Detention Centre
P.O. Box 3060
Napanee, Ontario
K7R 3S12

Warkworth Institution
P.O. Box 769
Campellford, Ontario
K0L 1L0

CIC — Kitchener

Waterloo Regional Detention Centre
Box 307
182 Hespeler Road
Cambridge, Ontario
N1R 3H8

Stratford Perth Detention Centre
20 St. Andrew Street
Stratford, Ontario
N5A 1A3

CIC — London

Elgin Middlesex Detention Centre
711 Exeter Road
London, Ontario
N6E 1L3

CIC — Mississauga Enforcement

Metro Toronto West Detention Centre
P.O. Box 4950
111 Disco Road
Etobicoke, Ontario
M9W 5L6

Maplehurst Adult Training Centre
P.O. Box 10
661 Martin Street
Milton, Ontario
L9T 2Y3

Ontario Correctional Institute
Box 1888
109 McLaughlin Street South
Brampton, Ontario
L6V 2P1

Syl Apps Youth Centre and the Oakville
Observation and Detention Home
475 Iroquois Shore Road
Oakville, Ontario
L6H 2Y7

Vanier Centre for Women and the Vanier
Centre for Young Offenders
205 McLaughlin Street South
Brampton, Ontario
L6V 2M5

Mimico Correctional Centre
Box 75, Station N
130 Horner Avenue
Toronto, Ontario
M8V 2S9

CIC — Niagara Falls

Niagara Falls Regional Detention Centre
P.O. Box 1050
Highway 58
Thorold, Ontario
L2V 4A6

CIC — Oshawa

Millbrook Correctional Centre
Box 300
Millbrook, Ontario
L0A 1G0

Whitby Jail
Box 156
200 Victoria Street West
Whitby, Ontario
L1N 6G3

CIC — Ottawa

Perth Provincial Jail
62 Beckwith Street East
Box 144
Perth, Ontario
K7H 3E3

Pembroke County Jail
297 Pembroke Street East
Pembroke, Ontario
K8A 3K2

Ottawa Carleton Regional Detention Centre
2244 Innes Road
Ottawa, Ontario
K1B 4C4

Rideau Correctional Centre
P.O. Box 100
Burritt's Rapids, Ontario
K0G 1B0

CIC — Prescott

Brockville Jail
P.O. Box 285
Brockville, Ontario
K6V 5E5

CIC — Sarnia

Sarnia Provincial Jail
700 North Christina Street
Sarnia, Ontario
N7V 3C2

Chatham Provincial Jail
17 Seventh Street
Chatham, Ontario
N7M 4J9

CIC — Sault Ste. Marie

Sault Ste. Marie District Jail
Provincial Institution
Box 340
145 McNabb Street
Sault Ste. Marie, Ontario
P6A 5L8

CIC — Sudbury

Haileybury District Jail
P.O. Box 578
Main Street
Haileybury, Ontario
P0J 1K0

North Bay District Jail
2250 Trout Lake Road
North Bay, Ontario
P1B 7S7

Sudbury District Jail
181 Elm Street West
Sudbury, Ontario
P3C 1T8

Monteith Correctional Centre
Box 90
Junction Highways 11 and 577
Monteith, Ontario
P0K 1P0

Cecil Facer Youth Centre
P.O. Box 850
Sudbury, Ontario
P3E 4S3

CIC — Thunder Bay

Thunder Bay Jail
Ministry of Correctional Services
Box 2806
285 McDougall Street
Thunder Bay, Ontario
P7A 2K4

Thunder Bay Correctional Centre (Prison Farm and Young Offenders)
Ministry of Correctional Services
Highway 61 South
Box 1900, Station F
Thunder Bay, Ontario
P7C 4Y4

CIC — Toronto Enforcement

Metro Toronto East Detention Centre
55 Civic Road
Scarborough, Ontario
M1L 2K9

Metro Toronto West Detention Centre
111 Disco Road
Rexdale, Ontario
M9W 1M3

Mimico Correctional Centre
P.O. Box 75, Station N
130 Horner Avenue
Toronto, Ontario
M8V 3S9

Toronto Don Jail
550 Gerrard Street East
Toronto, Ontario
M4M 1X6

Keele Community Correctional Centre
330 Keele Street
Toronto, Ontario
M6P 2K7

CIC — Windsor

Windsor Provincial Jail
378 Brock Street
Windsor, Ontario
N9C 2S7

CIC — Woodstock

Elgin Middlesex Detention Centre
711 Exeter Road
London, Ontario
N6E 1L3

7. MANITOBA REGION

CIC — Brandon

Brandon Correctional Institution
P.O. Box 1400
Brandon, Manitoba
R7A 6M9

Dauphin Correctional Institution
114 River Avenue West
Dauphin, Manitoba
K7N 0K7

The Pas Correctional Institution
306 Fischer Avenue
The Pas, Manitoba
R9A 0K5

CIC — Winnipeg

Headingley Correctional Institution
P.O. Box 130
Headingley, Manitoba
R0H 0J0

Provincial Remand Centre
141 Kennedy Street
Winnipeg, Manitoba
R3C 4N5

Portage la Prairie Correctional Centre for Women
329 Duke Avenue
Winnipeg, Manitoba
R1N 0S4

Stony Mountain Institution
P.O. Box 9250
Winnipeg, Manitoba
R3C 3W9

Milner Ridge Correctional Centre
P.O. Box 460
Beausejour, Manitoba
R0E 0C0

Agassiz Youth Centre
P.O. Box 1342
Portage La Prairie, Manitoba
R1N 3A9

Manitoba Youth Centre
170 Doncaster Street
Winnipeg, Manitoba
R3N 1X9

8. SASKATCHEWAN REGION

CIC — Prince Albert

Saskatchewan Penitentiary
Box 160
Prince Albert, Saskatchewan
S6V 5RC

Pine Grove Correctional Centre (for Women)
Box 3003
Prince Albert, Saskatchewan
S6V 6G1

Prince Albert Provincial Correctional Centre
Box 3003
Prince Albert, Saskatchewan
S6V 6G1

CIC — Saskatoon

Regional Psychiatric Centre (Prairies)
2520 Central Avenue North
Box 9243
Saskatoon, Saskatchewan
S7K 3X5

Saskatoon Correctional Centre
Box 7140
Saskatoon, Saskatchewan
S7K 4J1

North Battleford Correctional Centre
Box 996
North Battleford, Saskatchewan
S9A 3E6

CIC — Regina

Regina Correctional Centre
Box 617
Regina, Saskatchewan
S4P 3A6

9. ALBERTA AND NORTHWEST TERRITORIES REGION

CIC — Calgary

Calgary Correctional Institute
P.O. Box 3250
Station B
Calgary, Alberta
T2M 4L9

Calgary Remand Centre
335–6th Avenue S.W.
Calgary, Alberta
T2G 4V1

Drumheller Institution
Box 3000
Drumheller, Alberta
T0J 0Y0

Calgary Young Offenders Centre
P.O. Box 3240
Station B
Calgary, Alberta
T2M 4S9

Bow River Correction Centre
P.O. Box 3250
Station B
Calgary, Alberta
T2M 4L9

Calgary Detention Centre (Police Cells)
316 – 7th Avenue S.E.
Calgary, Alberta
T2G 0J2

Calgary West Remand Centre
1220 – 85th Street N.W.
Calgary, Alberta
T2M 4L9

CIC — Edmonton

Fort Saskatchewan Correctional Institute
9930 – 101 Street
Fort Saskatchewan, Alberta
T0B 1P0

Edmonton Remand Centre
9660 – 104 Avenue
Edmonton, Alberta
T5H 4B5

Alberta Hospital Edmonton (Forensic)
Box 307
17480 Fort Road
Edmonton, Alberta
T5J 2J7

Belmont Correctional Institute
Box 6057
Station M
Edmonton, Alberta
T5G 4R5

Edmonton Institution
Box 2290
Edmonton, Alberta
T5J 3H7

CIC — Grande Prairie

Peace River Correctional Institute
P.O. Box 400–90
Peace River, Alberta
T0H 2X0

Grande Cache Correctional Institute
P.O. Box 4000
Grande Cache, Alberta
T0E 0Y0

CIC — Lethbridge

Lethbridge Correctional Institute
P.O. Box 300
Lethbridge, Alberta
T1J 3Z3

Medicine Hat Remand Centre
874 – 2nd Street S.E.
Medicine Hat, Alberta
T1A 8H2

CIC — Red Deer

Bowden Institution
Box 6000
Innisfail, Alberta
T0M 1A0

CIC — Yellowknife

Yellowknife Correctional Centre
P.O. Box 278
Yellowknife, Northwest Territories
X1A 2B2

Northwest Territories Correctional Centre for Women
P.O. Box 107
Fort Smith, Northwest Territories
X0E 0P0

Baffin Correctional Centre
P.O. Box 368
Iqaluit, Northwest Territories
X0A 0H0

10. BRITISH COLUMBIA AND YUKON REGION

CIC — Huntington

Ferndale Institution
P.O. Box 50
Mission, British Columbia
V2V 4L8

Kent Institution
Box 1500
Agassiz, British Columbia
V0M 1A0

Matsqui Institution
P.O. Box 2500
Abbotsford, British Columbia
V2S 4P3

Mountain Institution
P.O. Box 1200
Agassiz, British Columbia
V0M 1A0

Mission Institution
P.O. Box 60
Mission, British Columbia
V2C 4L8

Regional Psychiatric Centre
P.O. Box 3000
Abbotsford, British Columbia
V2S 4P4

Stave Lake Institution
P.O. Box 1000
Maple Ridge, British ColumbiaV2X 7G4

Sumas Centre
P.O. Box 248
Abbotsford, British Columbia
V2S 4N9

Chilliwack Forest Camp
P.O. Box 365
Chilliwack, British Columbia
V2P 6J4
(*includes Security Unit, Mount Thorston and Ford Mountain*)

Community Correctional Centre
46029 Victoria Avenue East
Chilliwack, British Columbia
V2P 2T9

Elbow Lake
Harrison Mills, British Columbia
V0M 1L0

CIC — Kamloops

Kamloops Regional Correctional Centre
2250 West Trans–Canada Highway
Box 820
Kamloops, British Columbia
V2C 5M9

CIC — Nanaimo

Nanaimo Correctional Centre
Bag 4000
Nanaimo, British Columbia
V9R 5N3

Lakeview Youth Camp
P.O. Box 8500
Campbell River, British Columbia
V9W 5C5

CIC — New Westminster

Alouette River Institute
248 Street
P.O. Box 4000
Maple Ridge, British Columbia
V2X 7G4

Haney Forest Camp
248 Street
P.O. Box 1000
Maple Ridge, British ColumbiaV2X 7G4

Stave Lake Camp
Box 1000
North End Burma Road
Maple Ridge, British Columbia
V2X 7G4

Twin Maples Institute
280th Street – 104 Avenue
Ruskin, British Columbia
V0M 1R0

Colony Farm
500 Lougheed Highway
Port Coquitlam, British Columbia
V3C 4J2

Burnaby Correctional Centre for Women
(Open Living Unit)
7900 Fraser Park drive
Burnaby, British Columbia
V5J 5B9

Fraser Regional Correctional Centre
Box 1500
Maple Ridge, British Columbia
V4X 1B1

Riverview Hospital
500 Lougheed Highway
Port Coquitlam, British Columbia
V3C 4J2

CIC — Prince George

Prince George Correctional Centre
Guay Road
R.R. 1
Prince George, British Columbia
V2N 2H8

CIC — Prince Rupert

Terrace Correctional Centre
4926 West Highway 16
Terrace, British ColumbiaV86 1L8

CIC — Vancouver

Marpole Community Correctional Centre
8982 Hudson Street
Vancouver, British Columbia
V6P 4N4

Willingdon Youth Detention Centre
3655 Willingdon Avenue
Burnaby, British Columbia
V5G 3X1

Vancouver Pretrial Services Centre
275 East Cordova Street
Vancouver, British Columbia
V6A 3W3

CIC — Victoria

William Head Correctional Service of Canada
Box 4000
Station A
Victoria, British Columbia
V8X 3Y8

Vancouver Island Regional Correctional Centre
4216 Wilkinson Road
Victoria, British Columbia
V8T 5B2

CIC — Whitehorse

Whitehorse Correction Centre
232 Range Road
Whitehorse, YukonY1A 5B6

APPENDIX L
DETENTION RELEASE INFORMATION FOR SIOs

1. AN SIO'S AUTHORITY TO RELEASE FROM DETENTION

Under A103(5) an SIO has the authority to release from detention, within 48 hours, any person who has been detained for examination or inquiry (see Authority to Release from Detention, form IMM 5023 at APPENDIX P). The SIO does not have this authority once the detention has lasted for 48 hours. When an SIO reviews a person's detention under A103(5), he or she should complete a Release Hearing form (IMM 1439; see APPENDIX Q), which will document what occurred during the review.

If an SIO does not release the person and the person's examination, inquiry, or removal does not take place within 48 hours, the person is entitled under A103(6) to be brought before an adjudicator as soon as practicable so that his or her detention may be reviewed. Should the detention be continued, the person is entitled to be brought before an adjudicator at least once during the seven days immediately following the expiry of the 48–hour period, and thereafter at least once during each 30–day period following each previous review.

If a person must be brought before an adjudicator under A103(6) for a review of the reasons for continued detention, an SIO must immediately notify the Adjudication Division by sending a completed Request for an Inquiry/Detention Review pursuant to the Adjudication Rules (form IMM 5245).

2. ACCEPTABLE CONDITIONS OF RELEASE

Acceptable terms and conditions of release may include paying a security deposit or posting a performance bond.

If a detainee may appropriately be released on the condition that another party will be responsible for the detainee, an SIO should consider releasing, or seeking the release of, the detainee to an individual responsible guarantor who comes forward on the person's behalf.

When deciding whether to release a detainee, the SIO must be satisfied that the guarantor is able to exercise enough control over the movements of the person released that he or she will report as required for any continuation of immigration proceedings. The SIO must also assess the reliability of the guarantor. For example, if a proposed guarantor has defaulted on a previous bond, then the SIO may be less inclined to release the person without requiring a cash deposit.

If an SIO is under a legal requirement to detain a person, the SIO must not release the person.

For further information on release from detention, see chapters EC 3 and EC 8.

APPENDIX M
SAMPLE OF IMM 654 (02–90) B – MONTHLY DETENTION MONITORING REPORT

Employment and Immigration Canada
Emploi et Immigration Canada

PROTECTED WHEN COMPLETED
PROTÉGÉ UNE FOIS REMPLI

MONTHLY DETENTION MONITORING REPORT
RAPPORT MENSUEL DE SUIVI DES MISES SOUS GARDE

To be sent by "FAX" (819-953-8119) to:
Chief, Detentions (Enforcement)
Immigration Program Delivery, NHQ

(See chapter IE 10.30)

À télécopier (819-953-8119) au:
Chef, Mises sous garde (Exécution de la Loi)
Exécution du programme d'immigration, AC

(Voir chapitre IE 10.30)

1 NAME – NOM DATE OF BIRTH – DATE DE NAISSANCE CITIZENSHIP – CITOYENNETÉ LOCAL FILE NO. – N° DE DOSSIER DU BUREAU LOCAL NHQ FILE NO. (if known) – N° DE DOSSIER DE L'A.C. (si connu)	2 Check (√) only one *Cochez seulement une case* Pre 1.1.89 refugee claimant *Personne qui a revendiqué le statut de réfugié avant le 1.1.89*	Post 1.1.89 refugee claimant *Personne qui a revendiqué le statut de réfugié après le 1.1.89*	Is not a refugee claimant *N'est pas un demandeur du statut de réfugié*	3 Number of days detained *Nombre de jours de détention*	4 Place detained *Lieu de détention*	5 REMARKS – OBSERVATIONS

Region ▲ / *Région* ▲ — Date of report ▲ / *Date du rapport* ▲ — Page ▲ of ▲

IMM 654 (02-90) B

Canada

APPENDIX N

SAMPLE OF IMM 1457 (04–88) B – LOG – ALLEGED WAR CRIMINALS

Employment and Immigration Canada / Emploi et Immigration Canada

CIC: _____

Page _____

LOG - ALLEGED WAR CRIMINALS
REGISTRE - CRIMINELS DE GUERRE PRÉSUMÉS

Name (and personal details if any) Of Alleged War Criminal *Nom (renseignements personnels, au besoin) du criminel de guerre présumé*	Location in Canada Including Address - if indicated *Lieu de résidence au Canada, y compris l'adresse, si connue*	If Applying Abroad Show Location *Si demande présentée à l'étranger, indiquer où*	Name & Address of Person Making Allegation and Date of Allegation *Nom et adresse de la personne qui a avancé les allégations et date de celles-ci*	Documentary Evidence (Show Yes or No) *Preuve documentaire (Oui ou Non)*	Disposition - Destination			
					To RCMP *A la GRC*	To Post *Au bureau à l'étranger*	Local Immigration Office *Local d'immigration local*	To IHQ *A l'AC*

EMC 4571 (04-88)

Canada

APPENDIX O
SAMPLE OF IMM 5026 (04–93) B – MEAL AUTHORIZATION

Employment and Immigration Canada / Emploi et Immigration Canada

MA 07451

MEAL AUTHORIZATION – *AUTORISATION POUR REPAS*

PROTECTED WHEN COMPLETED / *PROTÉGÉ UNE FOIS REMPLI* – B

To: / *Pour :* Name of facility – *Nom de l'hôtel ou du restaurant*	
This will introduce / *Nom du titulaire* — Surname – *Nom*	Given name(s) – *Prénom(s)*
Date and time of arrival – *Date et heure d'arrivée*	Name of carrier and flight number – *Nom du transporteur et nº du vol*

You are hereby authorized to advance to the above – named person:
Vous êtes prie de fournir à crédit les services suivants à la personne susnommée :

Breakfast credit / *Petit dejeuner* ( ) X $ _____ to total of / *jusqu'à concurrence de* $ _____

Lunch credit / *Dejeuner* ( ) X $ _____ to total of / *jusqu'à concurrence de* $ _____

Dinner credit / *Diner* ( ) X $ _____ to total of / *jusqu'à concurrence de* $ _____

( ) nights accommodation to a total of
et une chambre durant ( ) nuits jusqu'à concurrence de ..... $ _____

for the period of
pour la période de _____ _____

Accounts should be submitted in triplicate and be accompanied by copy 2 of this authority to the following address:
Veuillez envoyer la feuille 2 du présent formulaire avec votre facture en trois exemplaires à l'adresse suivante :

Manager / *Le directeur*
Canada Immigration Centre / *Centre d'immigration du Canada*

_____

_____

☐ CEIC liability case / *Responsabilite de la CEIC*

☐ Transportation company liability case / *Responsabilité du transporteur*

CIC

Signature of Immigration Officer – *Signature de l'agent d'immigration*

File number – *Nº de dossier du CIC*

BLUE - HOTEL OR RESTAURANT / *BLEU - HÔTEL OU RESTAURANT*
PINK - FOR RETURN TO CIC WITH ACCOUNT / *ROSE - À RENVOYER AU CIC AVEC LA FACTURE*
CANARY - CIC FILE / *CANARI - DOSSIER DU CIC*

IMM 5026 (04-93) B

Canada

APPENDIX P
SAMPLE OF IMM 5023 (12–88) B – AUTHORITY TO RELEASE FROM DETENTION

Employment and Immigration Canada / Emploi et immigration Canada

AUTHORITY TO RELEASE FROM DETENTION

AUTORISATION DE MISE EN LIBERTÉ

_____
Full name of detainee
Nom au complet de la personne mise sous garde

_____
Date of birth of detainee - *Date de naissance*

_____
Name of detention centre - *Nom du lieu de garde*

Pursuant to the Immigration Act, you are hereby authorized to release the above-named person from Immigration detention, if that person is detained by you for no other cause,

Si la personne susnommée n'est pas gardée pour d'autres motifs que ceux liés à l'immigration, vous êtes, par les présentes, autorisé(e), aux termes de la Loi sur l'immigration,

- into the custody of the Canada Immigration Officer presenting this authority; ☐ *à en confier la garde à l'agent d'immigration du Canada porteur de la présente autorisation.*
- into the custody of the police officer or security guard presenting this authority; ☐ *à en confier la garde à l'agent de police ou à l'agent de sécurité porteur de la présente autorisation.*
- without condition. ☐ *à la mettre en liberté sans condition.*

_____
Date of release - *Date de la mise en liberté*

_____
Time of release - *Heure de la mise en liberté*

_____
Name of Canada Immigration Centre
Nom du Centre d'immigration Canada

_____
CIC File No. - *Nº de dossier du CIC*

_____
Signature of Senior Immigration Officer - *Signature de l'agent principal*

_____
Date

IMM 5023 EP-I (12-88)B

Canada

APPENDIX Q
SAMPLE OF IMM 1439 (10–88) B – RELEASE HEARING

Employment and Immigration Canada / Emploi et Immigration Canada

RELEASE HEARING

DATE	FILE NUMBER

Detainee's Name _____ On _____ 19 ____

I _____ a senior immigration officer, conducted a release hearing concerning the above named detainee at _____ pursuant to subsection 103(5) of the Immigration Act.

INTERPRETER PRESENT	COUNSEL	NECESSARY DOCUMENTATION REVIEWED
☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO
DATE AND TIME OF DETENTION	**SENIOR IMMIGRATION OFFICER ADVISED OF DETENTION AT**	**RELEASE HEARING COMMENCED**
____ AM/PM ____ DATE 19 ____	____ AM/PM ____ DATE 19 ____	____ AM/PM ____ DATE 19 ____

IN MY OPINION, HE SHE

1		2
☐ POSES A DANGER TO THE PUBLIC; AND OR	☐ WOULD NOT OTHERWISE APPEAR FOR EXAMINATION, INQUIRY OR REMOVAL	☐ SHOULD BE RELEASED FROM DETENTION

NOTES - (INCLUDING REASONS FOR CONTINUED DETENTION OR RELEASE).

I HAVE OFFERED RELEASE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

TYPE OF BOND	AMOUNT
☐ CASH ☐ PERFORMANCE ☐ CO-SIGNED ☐ ACKNOWLEDGEMENT	$ _____

_____
SENIOR IMMIGRATION OFFICER

RELEASED ON

_____ AT: _____ AM/PM. _____
IMMIGRATION OFFICER OR SENIOR IMMIGRATION OFFICER

IMM 1439 EF-1 (10-88) B

Canada

FRANÇAIS AU VERSO

IMMIGRATION

Canada

Chapter EC 2
Immigration Inquiries



Employment and Immigration Canada

Emploi et Immigration Canada

Preparing and Presenting a Case at an Immigration Inquiry

Abbreviations and Short Forms	
Act	*Immigration Act*, as amended
CIC	Canada Immigration Centre
Commission	Canada Employment and Immigration Commission
CPO	Case Presenting Officer
IAD	Immigration Appeal Division, Immigration and Refugee Board
IO	Immigration Officer
Minister	Minister of Employment and Immigration
SIO	Senior Immigration Officer

1. INTRODUCTION 1
1.1 What this chapter is about 1
1.2 Policy intent 1

2. INFORMATION FOR PERSONS CONCERNED 2

3. UNDERSTANDING THE INQUIRY PROCESS 4
3.1 General 4
3.2 Your role as the case presenting officer 5
3.3 The burden of proof 5
3.4 The burden of introducing evidence 5
3.5 Rules of evidence 6

4. TYPES OF INQUIRIES 7
4.1 Inquiries following an A20(1) report 7
4.2 Inquiries following an A27(3) direction 7
4.3 Inquiries following an A103(2) arrest 8

5. PREPARING A CASE 10
5.1 Verifying the technical details 10
5.2 Claim to Canadian citizenship 10
5.3 Withdrawing notices or directions 11
5.4 Additional allegations 11
5.5 Including family members 11
5.6 Witnesses 12
5.7 Evidence 12
5.8 Documentary evidence for criminal equivalence and pardons 12
5.9 Extradition proceedings 13
5.10 Claims to refugee status 13
5.11 Requests for postponement 14
5.12 Request for a change of venue 14
5.13 Attending a pre-inquiry conference 14

6. PRESENTING THE CASE 15
6.1 The inquiry proceedings: opening format 15
6.2 Reading and filing the report, report and direction or notice 15
6.3 Evidence on the identity, citizenship and status of the person concerned 16
6.4 Evidence on the allegations 17
6.5 Additonal allegations 17
6.6 Examining and cross-examining witnesses 18
6.7 Claim to Canadian citizenship 18
6.8 Adjournment to consider withdrawing notices or directions 18
6.9 Claim to refugee status 19
6.10 Request for adjournment 20
6.11 Request for a change of venue 20
6.12 Submissions on the allegations 20
6.13 The adjudicator's decision 21
6.14 Submissions on a deportation or departure order 21
6.15 Submissions on detention or release 22

7. DETENTION REVIEWS 24-1
7.1 Authority to release from detention 24-1

7.2 Notifying the Adjudication Division 24-1
7.3 Detention review format 24-1
7.4 No objection to release 25
7.5 Presenting reasons for detention 25
7.6 Submissions by person concerned or counsel 26
7.7 Adjudicator's decision 26

8. POST-INQUIRY PROCEDURES 27
8.1 Carrying out the adjudicator's decision 27
8.2 Applications for appeal or judicial review 27
8.3 Prosecutions 28

9. REPORTING 29

10. FEEDBACK 30
10.1 Responding to representations 30

11. REFERENCES 31

APPENDIX A
LIST OF CASES 39

APPENDIX B
RULES OF EVIDENCE 41

1. The admissibility of evidence 41
2. The relevance of evidence 41
3. The weight of evidence 41
4. The different types of evidence 42
   4.1 Direct evidence 42
   4.2 Circumstantial evidence 42
   4.3 Presumption 42
   4.4 Judicial notice 42
5. Documentary evidence and testimony 42
   5.1 Documentary evidence 42
   5.2 Statutory declarations 43
   5.3 Testimony 43

APPENDIX C
CLAIMS TO CANADIAN CITIZENSHIP 45

1. Dealing with a request for adjournment to examine a claim to Canadian citizenship 45
2. Action following the specified time period 45
3. Resumption of the inquiry 45
4. Certificate of citizenship issued 45
5. Urgent cases 46

APPENDIX D
EVIDENCE REQUIREMENTS FOR SPECIFIC ALLEGATIONS 47

1. General 47
2. Evidence for inadmissible cases 47
   2.1 A19(1)(a) 47

2.2 A19(1)(b) 47
2.3 A19(1)(c), A19(1)(c.1) and A19(1)(c.2) 48
2.4 A19(1)(d) 49
2.5 A19(1)(e) 49
2.6 A19(1)(f) 49
2.7 A19(1)(g) 50
2.8 A19(1)(h) 50
2.9 A19(1)(i) 50
2.10 A19(1)(j) 51
2.11 A19(1)(k) 52
2.12 A19(1)(l) 52
2.13 A19(2)(a) and 19(2)(a.1) 52
2.14 A19(2)(b) 53
2.15 A19(2)(c) 53
2.16 A19(2)(d) 53
2.17 Loss of residence 53
3. Evidence for A27(1) cases 54
3.1 A27(1)(a) 54
3.2 A27(1)(a.1) 55
3.3 A27(1)(a.2) 55
3.4 A27(1)(a.3) 55
3.5 A27(1)(b) 55
3.6 A27(1)(c) 55
3.7 A27(1)(d) 56
3.8 A27(1)(e) 56
3.9 A27(1)(f) 56
3.10 A27(1)(g) 56
3.11 A27(1)(h) 56
4. Evidence for A27(2) cases 57
4.1 A27(2)(a) 57
4.2 A27(2)(b) 57
4.3 A27(2)(c) 57
4.4 A27(2)(d) 57
4.5 A27(2)(e) 57
4.6 A27(2)(f) 59
4.7 A27(2)(g) 59
4.8 A27(2)(h) 59
4.9 A27(2)(i) 59
4.10 A27(2)(j) 60
4.11 A27(2)(k) 60
4.12 A27(2)(l) 60

APPENDIX E
CRIMINAL EQUIVALENCE AND PARDONS 61
1. Criminal equivalences 61
1.1 Brannson 61
1.2 Anderson 62
1.3 Dayan 62
1.4 Implications 63
2. Pardons and rehabilitation 63
2.1 Pardons for convictions in Canada 63

2.2 Pardons for convictions outside Canada 64
3. Case law on criminal equivalencies 65
3.1 Adjudicator's jurisdiction 65
3.2 Evidence required to prove equivalency 65
3.3 Other case law 66
4. Examples of determining equivalence 66
4.1 United States Internal Revenue Code 66
4.2 Hong Kong Prevention of Bribery Ordinance 68
4.3 South Africa Road Traffic Ordinance 69

APPENDIX F
ADJOURNMENTS 71
1. Factors in an adjournment request 71
2. Mandatory adjournments 71
3. Discretionary adjournments 71
4. Adjournments to obtain counsel 72
5. Adjournments to seek a Minister's permit 72
6. Adjournments for humanitarian considerations 73
7. Adjournments for additional evidence or arguments 74
8. Adjournments for a change of venue 74

APPENDIX G
REMOVAL ORDERS 75
1. General 75
2. Removal of persons seeking admission to Canada 75
3. Removal of permanent residents described in A27(1) 75
4. Removal of persons described in A27(2) 75
5. Removal of a Minister's permit holder 76

APPENDIX H
ADJUDICATION RULES OF PRACTICE 77
1. Service of documents 77
2. Applications 77
2.1 Motions for confidentiality 77
2.2 Charter matters 78
2.3 Applications 78
3. Conferences 78
4. Witnesses 78

APPENDIX I
DETENTION REVIEWS FOR A103.1 CASES 79
1. General 79
2. Identity Established During Period of Continued Detention 79
3. Certificates to Extend Detention 79
4. Amended Certificates to Extend Detention [A103.1(3)] 80
5. Preparing Submissions for A103.1 Detention Reviews 80

1. INTRODUCTION

1.1 What this chapter is about

This chapter describes how to prepare and present a case at an immigration inquiry.

An inquiry under the *Immigration Act* is a hearing concerning a person who is not admissible to Canada, or who is alleged to have violated at least one of the provisions of the Act or its regulations. The adjudicator decides whether the person concerned may be admitted to or allowed to come into or remain in Canada, or whether to make a departure, exclusion or deportation order against the person concerned.

As the case presenting officer at the inquiry, you present the allegation against the person concerned, and the supporting evidence and arguments.

1.2 Policy intent

The Canada Employment and Immigration Commission's policy aims for immigration inquiries are:

- to maintain and guarantee public order, health and security in Canada, and
- to promote international law, order and justice by denying access to Canadian territory by persons who are likely to engage in criminal activity.

2. INFORMATION FOR PERSONS CONCERNED

In the interest of fairness, the person concerned should fully understand the nature and purpose of the inquiry. The *Immigration Act* and its regulations respect the rights to which an individual is entitled under the *Canadian Charter of Rights and Freedoms*. The *Charter* guarantees the person concerned these rights:

- the right to life, liberty and security of person and the right not to be deprived thereof except in accordance with the principles of fundamental justice
- the right on arrest or detention
  - to be informed promptly of the reasons for the arrest or detention
  - to be informed without delay of the right to retain and instruct counsel
  - to have the validity of a detention determined and to be released from detention if the detention is not lawful
- the right to the assistance of an interpreter in any proceedings in which the person concerned is a party or a witness before a court or tribunal, and does not understand or speak the language in which such proceedings are being conducted or who is deaf. [The *Constitution Act,* s.7, 10, 14]

The *Immigration Act* provides that the person concerned at an inquiry

> shall be informed of the person's right to obtain the services of a barrister or solicitor or other counsel and to be represented by any such counsel at the inquiry and shall be given a reasonable opportunity, if the person so desires, to obtain such counsel at the person's own expense [A30].
>
> *Note: References to the* Immigration Act, *as amended, appear in the text in this chapter with an "A" prefix followed by the section number, as here: the Act, section 30.*

The person concerned does not have to be represented by a lawyer; the person may choose a friend, or a representative of an organization or association with an interest in the welfare of the person concerned.

The person concerned and that person's counsel may examine all the evidence you present, and may cross-examine the witnesses you call. They may also summon witnesses and present documentary evidence and submissions to support their position.

Before the inquiry begins, you will ensure that the person concerned has received a properly completed Notice of Inquiry Caused by a Senior Immigration Officer (form IMM 5246), a Notice of Rights Conferred by the Vienna Convention (form IMM 689) if applicable, and a copy of the report that resulted in inquiry action. If you are aware that the person concerned has retained counsel, you will ensure that duplicates of the relevant notices and documents are sent to counsel.

If the person concerned has family members who are not Canadian citizens or permanent residents 19 years of age or over and who are dependent on the person concerned, you will ensure that each family member has been notified of:

- the reason for the inquiry and the authority for the adjudicator possibly including the family member in a removal order or conditional removal order
- the right to obtain, instruct and be represented by counsel, and
- the right to participate fully in the inquiry by examining evidence, cross-examining witnesses and presenting evidence and witnesses.

The inquiry must be held in the official language chosen by the person concerned [see *Adjudication Division Rules*, rule 10].

3. UNDERSTANDING THE INQUIRY PROCESS

3.1 General

An immigration inquiry is a quasi-judicial administrative process: one that is neither purely administrative nor purely judicial. The rules of natural justice apply to inquiries, notably the right to know the case against oneself, the right to a reasonable opportunity to present one's case, and the right to a hearing before an unbiased decision-maker.

Courts have determined that an immigration inquiry is not like a criminal proceeding in that the purpose of an inquiry is not to determine guilt or innocence. Immigration inquiries do not deal with offences and penal consequences, but rather with the issues of the loss or retention of status. Another substantive difference is that in an immigration inquiry, the person concerned is usually the principal source of evidence presented on behalf of the Minister of Employment and Immigration, while in criminal proceedings the accused cannot be required to testify against himself or herself [*Dan-Ash*; Appendix A, case 1].

> *Note: All appendices to this chapter appear in the separate Supplement to Chapter EC 2. A list of court cases relevant to this chapter appears in Appendix A. The text gives a short form of the case name (the style of cause), followed by the number of the case in Appendix A, referring here to Dan-Ash v. Minister of Employment and Immigration, FCA, Doc. No. A-655-86, June 21, 1988.*

The rules governing the admissibility and presentation of evidence are much less restrictive than in judicial proceedings, and an adjudicator is not bound by the formal rules of evidence [*Dan-Ash*; Appendix A, case 1].

An adjudicator presides over the inquiry, and is appointed under the *Public Service Employment Act*. The adjudicator is an impartial decision-maker who must consider the evidence presented at the hearing by you, by the person concerned and (if applicable) by the counsel of the person concerned, before making a decision.

An inquiry is conducted in public and, wherever practicable, in the presence of the person concerned. If the person concerned consents in writing, the inquiry can be held without a hearing and in the absence of the person concerned [A29(1)]. If the adjudicator is shown that there is a serious possibility that the life, liberty or security of the person concerned will be threatened if a case is publicized, the adjudicator may, on request, take any action or make any necessary order to ensure that proceedings remain confidential [A29(2) and A29(3); *Pacific Press Ltd.*; Appendix A, case 2].

The person concerned cannot refuse to answer questions on grounds of self-incrimination, although the person concerned may seek the protection of the *Canada Evidence Act* to prevent the use of his or her own testimony in criminal proceedings [*Chana*; Appendix A, case 3].

A person at an inquiry who refuses to swear an oath, make a solemn declaration or affirmation, or answer a question is guilty of an offence and may be prosecuted under the Act [A94(1)(g)].

3.2 Your role as the case presenting officer

As the case presenting officer, you are an immigration officer who represents the Minister of Employment and Immigration in inquiry proceedings before an adjudicator.

Your main role is to present the Minister's position to the adjudicator. You are a firm advocate of the Minister's position, and you are subject to the direction of the Minister. You should always be aware that you are speaking and acting on behalf of the Minister, and the positions and actions you take should reflect departmental policy.

At the same time, you have an obligation to set all the relevant evidence fairly before the adjudicator. This is particularly important in cases where the person concerned is not represented by legal counsel.

You may call witnesses to the inquiry and present documentary evidence. You will have an opportunity to examine all the evidence presented by the person concerned and the counsel of the person concerned, and to examine and to cross-examine any witnesses, including the person concerned.

3.3 The burden of proof

The burden of proof is the responsibility for establishing the case, and it remains on the same party throughout the inquiry. For a person seeking to come into Canada, A8(1) places the burden of proof on the person concerned. For an inland inquiry under A27, the burden of proof is on the Commission.

Proof beyond a reasonable doubt is the rule only in criminal matters. In an inquiry, the necessary burden of proof is the *balance of probabilities*: for example, you must demonstrate that your version of events is more probable than the one presented by the person concerned. If the evidence is inconclusive, the adjudicator is entitled to decide that the person upon whom the burden of proof rests has not discharged it.

Even if the burden of proof is on the person concerned, you must still present evidence. The courts have ruled that the Minister has an obligation to substantiate the case. In A19(1)(h) cases the removal order will be set aside if a court finds that there was no evidence upon which the adjudicator could have reasonably arrived at the decision [*Dhesi*; Appendix A, case 4].

3.4 The burden of introducing evidence

The burden of introducing evidence is the obligation to introduce evidence of a fact so that the adjudicator can consider it. The burden shifts from one party to the other throughout the inquiry.

The initial burden of introducing evidence will generally be on the Minister, whether or not the person concerned is seeking admission. It then shifts to the person concerned and back to you. It is up to you to demonstrate – by introducing evidence, by examination, by cross-examination and so forth – that the version of events you are advancing is more probable than the one put forward by the person concerned.

3.5 Rules of evidence

Although an inquiry is not bound by the strict rules of evidence that are found in judicial proceedings, you should be aware of:

- the admissibility of evidence
- the relevance of evidence
- the weight of evidence
- the different types of evidence, and
- documentary evidence and testimony.

Appendix B discusses how these topics affect your performance in the boardroom.

4. TYPES OF INQUIRIES

You will find yourself representing the Minister at three types of inquiries.

4.1 Inquiries following an A20(1) report

An IO must write a report under A20(1) when the IO believes that it would or may be contrary to the Act or the regulations to grant admission to a person, or to let that person come into Canada. The report must be in writing, complete, precise, and should specify the particular provisions of the Act or the regulations under which the IO believes that the person concerned is not admissible. The report is the legal document that gives the SIO the authority to make an administrative removal order or to cause an inquiry to be held.

Following the IO's report under A20(1), an inquiry is triggered when four conditions occur:

- when an SIO decides not to grant admission or otherwise authorize a person to come into Canada under A23(1) or A23(2), and
- when the SIO considers that there are no circumstances justifying the use of the discretionary power to grant entry to the person concerned under A19(3), or to recommend issuing a Minister's permit under A37(1)
- when the SIO does not allow the person concerned to leave Canada immediately under A23(4), and
- for cases where the SIO has jurisdiction, when the SIO does not make an exclusion order under A23(4), or a conditional departure order under A28(1).

A further consideration arises when a SIO receives a report that the person concerned is a member of an inadmissible class described in A19(1)(k): someone who constitutes a danger to the security of Canada. In that instance the SIO will start inquiry proceedings only if:

- in the case of a permanent resident, a certificate has been issued under subsection A40(1) for the person, or
- in the case of a person other than a permanent resident, the Minister and the Solicitor General of Canada have signed and filed a certificate for the person concerned in accordance with A40.1(1), and the Federal Court has not quashed the certificate under A40.l(4)(d).

4.2 Inquiries following an A27(3) direction

When an IO encounters a person described in A27(1) or A27(2), the IO must send a written report to the Deputy Minister setting out the details of any information the IO has indicating that the person concerned is such a person.

An inquiry under A27(3) is triggered by two circumstances:

- on the basis of the written report or other available information, if the Deputy Minister or the Deputy Minister's delegate does not authorize the person concerned to remain in Canada as a visitor under A27(2.1), and considers it appropriate to do so in the circumstances, the Deputy Minister or the delegate will forward a copy of the report to a SIO and direct in writing that a determination be made about any or all of the allegations mentioned in the report, and
- if the SIO does not make a departure order under A27(4) or a conditional departure order under A28(1), the SIO shall cause an inquiry to be held under A27(6) concerning the person concerned as soon as possible.

The legal basis for an inquiry held under A27(6) is the direction of the Deputy Minister or the delegate under A27(3).

Another circumstance arises when the Deputy Minister receives a report that the person concerned is a person described in paragraph A27(1)(a) or A27(2)(a) by reason of being a member of the inadmissible class described in A19(1)(k). In that instance the Deputy Minister will forward a copy of the report and the direction only if:

- in the case of a permanent resident, a certificate has been issued under A40(1) for the person, or
- in the case of a person other than a permanent resident, the Minister and the Solicitor General of Canada have signed and filed a certificate for the person under A40.1(1), and the Federal Court has not quashed the certificate under A40.1(4)(d).

4.3 Inquiries following an A103(2) arrest

The person concerned may have been arrested and detained under A103(2), that is, someone who on reasonable grounds is suspected of being a person referred to in A27(2)(b), A27(2)(e), A27(2)(f), A27(2)(g) or A27(2)(h), and where, in the opinion of the officer, there are reasonable grounds to believe that the person poses a danger to the public, or would not appear for the inquiry. In this case – and if neither a departure order under A27(4) nor a conditional departure order under A28(1) is made – the SIO must cause an inquiry to be held as soon as possible. The SIO's authority to initiate inquiry proceedings is based on the arrest and detention of the person concerned. The legal basis for an inquiry under A103(2) is the notice of arrest.

Priority should be given to an inquiry concerning a detained person. When it is deemed appropriate to do so, within 48 hours from the time the person concerned is detained, an SIO may order the release of the person concerned from detention under A103(5), with any terms and conditions that the SIO believes appropriate in the circumstances. If the person concerned is still in detention at the end of 48 hours, the person concerned must be brought before an adjudicator as soon as possible. The adjudicator will then review the reasons for the continued detention of the person concerned. If still detained, the person concerned must appear before an adjudicator for the same purpose after 7 days, and at least once every 30 days thereafter [A103(6)]. More information on your role appears in section 6.15 below.

The release from detention of the person concerned does not eliminate the SIO's authority to cause an inquiry to be held. Nor does it eliminate the SIO's authority to make a removal order or a conditional removal order.

5. PREPARING A CASE

5.1 Verifying the technical details

When you receive a case file for preparation, your first duty is to decide whether the case meets the technical, legal and factual requirements for presenting it to an adjudicator. Depending on the type of case, you should verify the report – or the report and direction, or the notice of arrest – for proper dating, authorizations and signatures, and correctly stated allegations.

At this stage you should arrange to have any errors or omissions in the report corrected. If it is necessary to return the file to the originating Canada Immigration Centre (CIC) for their action, you may need to apply to the Adjudication Division to have the inquiry postponed [*Adjudication Division Rules*, rule 8(1)]. An application to have an inquiry postponed should only be necessary if the flaw in the report or evidence cannot be rectified by the inquiry date and would prove embarrassing to the Commission.

If the case is ready to proceed to an inquiry, you should confirm that all information intended for the adjudication office has been sent to their registry. It may be necessary for you to obtain certain documentary evidence, and to research pertinent case law supporting the allegation.

Throughout your preparation you should keep in mind your general strategy for presenting the case, the issues you intend to raise, what witnesses you should call, your general line of questioning, and what exhibits you might need. Other important aspects of preparing your case are anticipating potential issues and arguments, and mapping out the ways you will respond to them.

5.2 Claim to Canadian citizenship

If the person concerned claims to be a Canadian citizen, you should confirm that the claim has been thoroughly investigated before you take any other action for an inquiry. Appendix C includes further information on claims to Canadian citizenship. The examining IO should have been familiar with paragraph 5(2)(b) of the *Citizenship Act*, concerning persons born abroad before 15 February 1977 to a mother who was a Canadian citizen by birth. These persons were not eligible for citizenship under the former Act; under the new Act they are not Canadian citizens, but they are entitled to apply for citizenship without becoming permanent residents. They must be given an opportunity to apply; application forms are available at all citizenship courts and from the Registrar of Canadian Citizenship, Department of Multiculturalism and Citizenship, Ottawa, Ontario K1A OM5.

5.3 Withdrawing notices or directions

After reviewing the file you may decide that the report is unfounded, or that additional facts indicate that the person concerned is clearly admissible. The Act and its regulations contain no specific provisions for withdrawing notices or directions for inquiry. In circumstances in which it is clearly evident that an inquiry is unwarranted, it would be pointless to subject the person concerned to an inquiry.

For a port of entry case, before you make a final decision you should discuss the case with your supervisor, and get the supervisor's agreement. You should then consult the SIO who signed the notice of inquiry and take the appropriate action. Annotate the file accordingly. If it is impossible to contact the SIO who signed the notice, send the SIO a memorandum as soon as possible, describing the action you took and the reasons for it.

For an inland case, you must discuss the matter with the CIC inquiries manager. The inquiries manager will contact the manager who signed the direction and will make the final decision on the appropriateness of proceeding or not to an inquiry. After the inquiries manager advises you of the decision, you should note in the file the reasons that led you to consult the manager, and the manager's final decision. If the adjudicator has already received the direction for inquiry, you should give the adjudicator a written notification of withdrawal of direction and notice for inquiry.

5.4 Additional allegations

Early on in your preparations you should consider the possibility of any additional allegations. If you know before the inquiry that you intend to present additional allegations, you should advise the adjudicator at the point of reading and filing the report, report and direction or notice of arrest which resulted in inquiry action. Section 6.5 below includes further information on circumstances when you may introduce additional grounds of inadmissibility or violation.

5.5 Including family members

In your case preparation you may need to assemble information about the members of the family of the person concerned, and to decide whether family members should be included in a removal order which may be made by the adjudicator. Dependent family members may be included in a removal or conditional removal order made by the adjudicator against the head of family, unless they are Canadian citizens or permanent residents 19 years of age or over [A33]. Including them may be desirable to avoid separating families and the possibility of dependants being abandoned when the head of family must be removed from Canada. You should ensure that family members as well as the person concerned have been informed of the date, time and place of the inquiry, their right to participate in the inquiry, and their right to counsel.

If family members are to be included in an order, you must introduce evidence at the inquiry establishing that the family members are in fact dependent on the head of the family. No persons can be included in a removal or conditional removal order unless they have been given an opportunity to establish that they should not be included. When dependent family members are included in a deportation or conditional deportation order, they do not require the Minister's consent under A55(1) to return [A33(3)].

5.6 Witnesses

As part of your pre-inquiry analysis of the report or direction, you should consider what witnesses you will call to testify on behalf of the Minister. You can ask a witness to appear voluntarily. However, if you have any reason to doubt that the witness will appear as requested, and if time permits, you can make an application in writing to the Adjudication Division to summon a witness [*Adjudication Division Rules*, rule 17(1)]. The application should indicate the specific matter about which the witness must testify. You may also make an application for a summons at the inquiry by asking the adjudicator to require the witness to appear [*Adjudication Division Rules*, rule 19(2)]. Because the party who calls the witness must pay the fees, you should first obtain the concurrence of your supervisor [*Adjudication Division Rules*, rule 16]. Appendix H includes further information on witness fees.

You should always have a plan for questioning a witness. A list of the general areas you want to cover is useful: don't simply prepare a mechanical list of questions to be followed rigidly. Be careful about asking questions to which you don't know the answers; fishing expeditions can have unexpected results!

5.7 Evidence

A significant part of your work in preparing a case is finding appropriate evidence to support it. Your case will be one of three types: port of entry cases under various parts of A19(1) and A19(2), inland cases under A27(1) or A27(2), and cases of arrest under A103(2). Each of the allegations has specific requirements for evidence, which are discussed in Appendix D.

5.8 Documentary evidence for criminal equivalence and pardons

The documentary evidence in your case may involve your examining details of a conviction obtained abroad to establish its equivalence to Canadian law. The method prescribed by the courts for determining equivalence is outlined in Appendix E [*Brannson*, *Dayan*, *Anderson*; Appendix A, cases 5, 6, 7]. You will need these documents as exhibits:

- evidence of the conviction, such as a certificate of conviction, a police report or a statutory declaration outlining a telephone conversation with a police officer, court reporter, or court records clerk.
- the legal description of the foreign offence: that is, the text of the statutory provision under which the person was convicted, and

- evidence (obtained from the charge or indictment or a similar document) of the particulars of the offence. In some cases, the certificate of conviction may contain sufficient information for the certificate to be used instead of the indictment [*Brannson*; Appendix A, case 5].

Appendix E discusses the ways in which you will present this documentary evidence.

The fact that a person may have been granted a pardon in another country does not necessarily affect that person's inadmissibility to Canada. In general, if a pardon recognized that the person concerned was convicted in error and should not have been convicted, the foreign pardon may be equivalent to a Canadian pardon. If it was granted for rehabilitation, however, the pardon will not necessarily make the person admissible. Appendix E includes a discussion of pardons.

5.9 Extradition proceedings

You should be aware of extradition in your case preparation. Extradition is a legal procedure based on a treaty between two countries, by which a fugitive, foreign criminal, or person wanted for certain stipulated offenses will be delivered to the proper authorities in the country from which the extradition request originates. The Commission has the legal right to proceed with an inquiry and order removal of a person subject to extradition proceedings.

A conflict of jurisdiction between the Commission on the one hand, and the courts and police authorities on the other hand, could be created if inquiry action is commenced simultaneously with or after extradition proceedings. If you detect any overlap or possible overlap between extradition and inquiry proceedings, you should inform the Case Management Branch at National Headquarters. In general, if an IO makes a report under A20(1) or an SIO receives a direction under A27(3) *before* extradition proceedings begin, the inquiry will be held in the normal manner. Similarly, if extradition is not granted or if an extradited person is released in his or her own country before trial and returns to Canada, an inquiry may proceed normally.

5.10 Claims to refugee status

Under the new *Immigration Act*, SIOs decide whether claims to refugee status are eligible to proceed to the Refugee Division of the Immigration and Refugee Board for a hearing. If you receive a claim immediately before the inquiry, eligibility must be determined by an SIO designated by Instrument I-17 to deal with eligibility. If your case includes the allegation A19(1)(c), A19(1)(c.1)(i), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k), or A19(1)(l), it may be necessary for you to initiate the process of obtaining the Minister's opinion that the person is a danger to the public or that it would be contrary to the public interest to have the claim determined in Canada, whichever is appropriate [A46.01(1)(e)(i) and (ii)]. You should consult and obtain the concurrence of your supervisor and regional and national officials as to the recommended course of action. Chapter EC 3 includes procedures for determining the eligibility of a claim to refugee status. Section 6.9 below gives further information on a claim to refugee status made during an inquiry.

5.11 Requests for postponement

If you receive a request for postponement of an inquiry from the person concerned or counsel, you must advise the person concerned or counsel that such a request must be made to the Adjudication Division [*Adjudication Division Rules*, rule 8(1)].

5.12 Request for a change of venue

Before an inquiry has started, the person concerned may ask for a change of venue. Such requests must be made to the Adjudication Division [*Adjudication Division Rules*, rules 7(1) and 7(2)]. Cost recovery charges are applicable whenever a change of venue is granted.

5.13 Attending a pre-inquiry conference

The Adjudication Division can direct that a pre-inquiry conference take place to help dispose of the inquiry expeditiously and provide for a full and proper hearing. Areas of discussion would include exchanging any mandatory information; disclosing other information, documents and statements; and agreeing on facts, issues and procedures [*Adjudication Division Rules*, rule 12].

6. PRESENTING THE CASE

6.1 The inquiry proceedings: opening format

Although the precise structure of inquiry proceedings may vary from adjudicator to adjudicator, you can expect this general format at the inquiry's opening:

- On opening the inquiry, the adjudicator will state the legal basis for the inquiry, the place, date and jurisdiction. This statement is necessary to indicate clearly to those present that the proceedings will be under the authority of the *Immigration Act* and that the adjudicator will be the person conducting the proceedings.
- The adjudicator will ask the person concerned, that person's counsel and, where applicable, members of the family of the person concerned to identify themselves. You then identify yourself, and state that you are the Minister's representative at the inquiry. The adjudicator will note the presence of any other people present, and may comment on the presence of the public at the hearing [A29].
- At this point the adjudicator will confirm that the person concerned can understand and communicate in the official language in which the inquiry is being held. If an interpreter is necessary, the adjudicator will ensure that there is effective communication between the interpreter and the person concerned, and the interpreter will take an oath.
- If the person concerned is not represented by counsel, the adjudicator will confirm that the person concerned has been made aware of his or her right to counsel.
- The adjudicator may ask you if family members of the person concerned should be included in the removal order or the conditional removal order. Indicate that each of them has been advised of the date, time and place of inquiry, the right to participate fully in the inquiry and the right to counsel. Then submit a copy of the documents that were sent or given to family members and counsel and ask that they be filed as exhibits.

6.2 Reading and filing the report, report and direction or notice

If the inquiry is based on an A20(1) report, you present the report in these suggested terms:

> A senior immigration officer has received a report under subsection 20(1) of the Immigration Act dated at *place* on *date* from *name*, an immigration officer who, after examining *name of person concerned*, believes that it would be contrary to the Act and regulations to grant admission to or otherwise authorize *name of person concerned* to enter Canada.

After your statement you ask that the report be filed as an exhibit.

If the inquiry is based on a report and direction under A27, you present the documents in these suggested terms:

> The Director General, Enforcement Branch, *or other, as necessary*, who is the Deputy Minister's delegate, has received a report under subsection 27(1) of the Immigration Act, dated at *place* on *date* from *name*, an immigration officer, concerning *name of person concerned*.
>
> Given this report and pursuant to subsection 27(3) of the Act, the Director General, Enforcement Branch, *or other, as necessary*, the Deputy Minister's delegate, has issued a direction that an inquiry should be held concerning *name of person concerned*. The direction was issued at *place* on *date*.

You then ask that the report and direction be filed as exhibits.

If the inquiry is based on an A103(2) arrest, you present the notice of arrest that has been made against the person concerned, as follows:

> A senior immigration officer has received a notice of arrest pursuant to paragraph 103(2)(a) of the Immigration Act containing information that *name of person concerned* has been arrested without warrant and detained for inquiry. The report is dated at *place* on *date*.

You then ask that the notice of arrest be filed as exhibit.

After your presentation, the adjudicator will explain to the person concerned the purpose of the inquiry, the allegations made and the possible results.

6.3 Evidence on the identity, citizenship and status of the person concerned

At this point, the CPO will call the person concerned as a witness.

After the person concerned has been sworn in, you must clearly establish that person's identity and citizenship. You may develop the evidence by questions and answers, such as:

- What is your correct name in full?
- Have you ever used any other name?
- What is your date of birth?
- Where were you born?
- Of what country are you a citizen?
- Are you a Canadian citizen?
- Are you a permanent resident of Canada?
- Do you have a passport?
- Do you have other identity documents?
- What is your permanent address?

Enter any documentary evidence into the record as an exhibit.

You should establish the status that the person concerned claims to have or seeks, by exploring residence and visa issues. Your questions should determine whether the person concerned is:

- an applicant for permanent residence with or without a valid immigrant visa
- a returning resident seeking to come into Canada as a returning resident, with or without a returning resident permit
- an applicant for temporary admission as a visitor with or without a visa
- a visitor to Canada
- a permanent resident of Canada, or
- a holder of a Minister's permit.

Then, if the case involves the inclusion of family members, you should establish the particulars of each family member. Design the questioning so that the person concerned does not give evidence about immediate family which could be obtained from them (if they are present). What happens next is like an inquiry within an inquiry. You will request that family members be called to testify about their citizenship, residence, status in Canada, and means of support. Usually, parents/relatives/guardians are requested to testify on behalf of children.

6.4 Evidence on the allegations

Then you will normally present evidence to substantiate the allegations contained in the report, the report and direction, or the notice of arrest. Your evidence will cover one or more of the allegations which are discussed in Appendix D.

6.5 Additonal allegations

If another ground of inadmissibility becomes apparent during the course of the inquiry, two considerations apply:

- for a port of entry case or a case of arrest without warrant – where additional allegations are described in paragraph A103(2)(a), namely A27(2)(b), A27(2)(e), A27(2)(f), A27(2)(g) or A27(2)(h) – you must advise the adjudicator. The adjudicator will then make sure that the person concerned understands this additional allegation and the possible consequences. These steps give the person concerned an opportunity to respond to the new allegation; failure to advise the person concerned would be a breach of natural justice.
- for an inland case, you may submit new grounds by introducing an additional report and direction under A27.

Additional allegations may also be presented where an inquiry is reopened under A46.07(1), and where the person is the subject of a report under A20(1)(a), or where the allegation is set out in an A27(1) or A27(2) report, and the Deputy Minister has issued a direction under A27(3) that a determination be made on the allegation [A46.07(5)].

6.6 Examining and cross-examining witnesses

Examining and cross-examining witnesses, especially those with interests opposed to yours, are difficult exercises. These general rules may be useful:

- Sometimes questioning should be subtle, rather than obvious, to obtain as much information as possible. You should build succeeding questions on the answers you receive. Depending on the answers you get, you may have to modify your plan for questioning witnesses and introducing evidence.
- Leading questions are those which suggest an answer. They can be a useful method of cross-examination, particularly where the facts are not in dispute or where the witness is proving to be uncooperative.
- You should use cross-examination only where it is likely to serve some useful purpose, either by clarifying the person's own testimony or adding to it, if it is incomplete. Alternatively, you might consider introducing evidence through other witnesses.
- You should take notes of the significant testimony of witnesses as the inquiry proceeds and use these notes to prepare and deliver submissions to the adjudicator.

When evidence introduced by the person concerned contradicts evidence that you introduce, you must consider whether further examination is necessary to resolve the contradiction. Bear in mind the overall credibility of the person concerned and the fact that the adjudicator will only accept evidence deemed credible and trustworthy. If the person concerned introduces questionable documentary evidence, such as an immigrant landing record, you may want to ask for an adjournment to have the document verified. You may also ask for an adjournment to ensure that the IO who examined the person concerned – or the SIO who reviewed the report – can attend to testify.

You may, if necessary, ask more questions after cross-examination, if the cross-examination raised new information. Throughout the inquiry you may also raise objections and respond to the representations of the person concerned on these objections.

6.7 Claim to Canadian citizenship

The person concerned might make a claim to Canadian citizenship after the inquiry has begun, and the adjudicator may allow a request for adjournment. Follow the procedures outlined in Appendix C.

6.8 Adjournment to consider withdrawing notices or directions

At some point in the inquiry's initial stages, evidence may have been introduced indicating that the case should not have gone to inquiry and that it is pointless to continue. You may ask for an adjournment to reconsider whether or not to pursue the allegation or allegations.

For a port of entry case, you should try to consult the SIO who signed the notice of inquiry. It is, of course, unnecessary to ask for an adjournment if you are the SIO who referred the case to inquiry. Consult and get the agreement of your supervisor. Add a note to the file accordingly. The adjudicator then must decide whether to permit the notice to be withdrawn or whether to render a decision as required under A31 and A32 or A32.1, based on the evidence already introduced. If the adjudicator concludes the inquiry without a decision, the SIO will grant admission under A23(2).

For an inland case, follow the same procedures outlined in 5.3 above. Introduce a written withdrawal of direction when the inquiry resumes. The adjudicator then allows the direction to be withdrawn, or makes a decision as required under A31 and A32 or A32.1, based on the evidence presented.

6.9 Claim to refugee status

If the person concerned makes a claim to refugee status during an inquiry, you should ask for a very short recess to get an immediate determination by an authorized SIO of whether the claim is eligible [A44(2)]. The person concerned is issued a Determination of Eligibility (form IMM 1442), which will state the reason in the case of an unfavourable decision. When the inquiry resumes, you will enter a copy of the Determination of Eligibility form in evidence.

However, if your case involves an allegation that the person concerned belongs to one of the inadmissible classes described in A19(1)(c), A19(1)(c.1)(i), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k) or A19(1)(l), the SIO will decide on the eligibility of the claim only *after* the adjudicator has decided whether the person concerned is described within one of these classes [A45(2)]. In this type of case, it may be necessary to initiate the process of obtaining the Minister's opinion "that the person is a danger to the public" or "that it would be contrary to the public interest to have the claim determined" in Canada, whichever is appropriate [A46.01(1)(e)(i) and (ii)]. The concurrence of your supervisor and regional and national officials as to the recommended course of action should be obtained.

The person concerned is responsible for establishing that he or she is eligible to have the claim determined by the Convention Refugee Determination Division. Although the eligibility decision will be made administratively, the person concerned is required by law to respond truthfully to all questions from the SIO or IO [A12(4), A45(5)]. Chapter EC 3 describes the procedures for determining the eligibility of a refugee claim.

6.10 Request for adjournment

In your case preparation you will already have reviewed the case law on adjournments, discussed in detail in Appendix D. In general, when you are faced with a request for adjournment during an inquiry you should use your personal judgement, experience and knowledge when arguing for or against the adjournment. You should base your submission on the same factors to which the adjudicator must refer, such as whether the adjournment will impede or assist the progress of the inquiry, and whether the reason the person concerned gives for the adjournment request justifies an interruption of the proceedings [*Adjudication Division Rules*, rule 8(4)]. You could check to see whether the person concerned asked for an earlier adjournment for the same reason (to obtain counsel, for example). You should also take into account the point which the inquiry has reached, and the anticipated length of the adjournment, before you argue for or against the proposed adjournment.

6.11 Request for a change of venue

If the person concerned makes a request for a change of venue during the inquiry, the adjudicator will hear the submissions of both parties before making a decision [*Adjudication Division Rules*, rule 7].

6.12 Submissions on the allegations

After you and the person concerned have finished presenting all your evidence, the adjudicator will give both parties an opportunity to make submissions about the allegations. You should summarize the evidence introduced at the inquiry. Your presentation should be clear, concise and delivered in a logical order. The submissions stage is not the time to introduce new facts. You should limit your presentation to the evidence introduced at the inquiry. You should also ensure that any statements and conclusions you make in your submission can be supported by the record.

In the case of a person seeking admission or seeking to come into Canada, for example, you may indicate in your submission that the person concerned has no right to enter Canada since he or she is neither a Canadian citizen nor a permanent resident of Canada, that the person concerned has not discharged the burden of proof and has therefore failed to establish admissibility. Because an adjudicator has the discretionary authority to grant entry under A19(3) in certain cases prescribed by the Act, you might want to mention that an SIO considered action under A19(3), but decided that special consideration was not warranted in this case.

In the case of a person already in Canada, you must indicate that the person concerned has no right to remain in Canada since he or she is neither a Canadian citizen nor a permanent resident of Canada. You could then summarize the evidence that would lead a reasonable and cautious person to conclude that there is a factual basis to the allegation.

6.13 The adjudicator's decision

Following your submissions, the adjudicator will give a decision about the allegations and whether or not the person concerned will be required to leave Canada. If the adjudicator finds that the person concerned is admissible or allowed to remain in Canada, the inquiry is over. If the adjudicator has found the person to be subject to a removal order, the adjudicator will give the decision and the reasons for it.

6.14 Submissions on a deportation or departure order

If the adjudicator has decided that the person concerned is described in the allegation, and is thus subject to a deportation or departure order, the adjudicator will invite both parties to make further submissions on this issue. When you are preparing your submissions, you should be aware of the various types of removal orders, discussed in APPENDIX G:

- for removal of persons seeking admission to Canada (deportation, exclusion, conditional deportation and conditional departure orders)
- for removal of permanent residents described in A27(1) (deportation, departure, conditional deportation and conditional departure orders), and
- for removal of persons described in A27(2) (deportation, departure, conditional deportation and conditional departure orders).

You may wish to recall the person concerned as a witness to elicit specific evidence on whether a deportation order should be issued, or whether a departure order could be issued in exceptional cases. In preparing your submission, you could ask yourself these questions:

- are the actions of the person concerned sufficiently serious to justify deportation?
- did the person concerned display a flagrant disrespect for Canadian law?
- did the person concerned display a wish to return to Canada? If so, does the person concerned have a good chance of satisfying the selection criteria abroad?
- does the person concerned have links with Canada that may lead to later visits?
- what was the past conduct of the person concerned in Canada?
- did the person concerned change addresses frequently while in Canada?
- did the person concerned elude examination or fail to report as requested?
- did the person concerned comply with bond requirements?
- did the person concerned attempt to escape or hide?
- what was the behaviour of the person concerned during inquiry?

Following submissions, the adjudicator will issue the removal order. The adjudicator will include the basis for decision on the removal order form, and date and sign it [A31(2)].

6.15 Submissions on detention or release

In a case where the inquiry is adjourned, or in a case where the adjudicator makes a removal order against the person concerned, you should – when you believe that detention or continued detention is justified – ask the adjudicator to order the detention of the person concerned. To justify your request, you must establish that the person concerned is likely to pose a danger to the public, or is not likely to appear for the inquiry or its continuation or for removal from Canada. "Likely" requires proof on a "balance of probabilities," which is a slightly more onerous test than "reasonable grounds".

When you make a submission on the ground that the person concerned is likely to pose a danger to the public, you should consider these factors:

- the criminal record of the person concerned
- the medical condition of the person concerned
- the association of the person with known criminals
- any classified reports about the person concerned relating to security or criminal activity, and
- the record of physical violence of the person concerned.

You must make strong arguments to adjudicators that clients who have a record of violence or who are involved in the traffic of drugs and who are assessed as a danger to the public, must not be released under any conditions – regardless of the potential length of stay in detention. A person's risk does not decrease or disappear simply because of the potential of a long stay in detention – for example, before removal can be effected. This argument must be advanced to adjudicators at detention reviews.

You may need to remind adjudicators that there are substantial differences between the legislative standards concerning detention, of the *Criminal Code* and the *Immigration Act*, not the least of which is the presumption of innocence for those accused of crimes under the *Criminal Code*. There is, of course, no such presumption in the *Immigration Act*, and indeed in many cases you deal with, the person has been previously convicted.

Section 515(10) of the *Criminal Code* allows for the continued detention of an accused, where necessary to ensure attendance at court. If detention is not warranted to ensure attendance at court, a court may then, (and only then), consider continued detention if it is required in the public interest or for the protection or safety of the public.

Continued detention for the second ground allowed in Section 515(10) requires that all the circumstances must be considered, including whether there is *any substantial likelihood* that the accused will commit a criminal offence or interfere with the administration of justice.

In contrast, Section 103(7) of the *Immigration Act* provides that adjudicators *must* detain unless they are satisfied that the person is not "likely" to pose a danger to the public. A person who has served his/her sentence for a violent crime may still be dangerous and likely to pose a danger to the public. For the purposes of the *Immigration Act*, completion of incarceration does not necessarily equate to attenuation of any risk to the public.

Where there are reasonable grounds to believe that a person is a danger to the public, do not offer release on a bond of any kind or in any amount. If you feel that your "danger to the public" argument may be rejected by an

adjudicator at detention review or inquiry, you should advance arguments in the alternative for substantial security, while re–iterating the department's position for detention. Part of your role as the Minister's representative is to provide for the Record of proceedings, a clear indication that the department has advanced every argument in favour of protection of the public, in cases where danger is an issue.

You might wish to indicate to an adjudicator your intention to make an alternative argument with respect to the nature and amount of security to be ordered, at the conclusion of your argument for detention or continued detention, as follows:

> "Madam Adjudicator, the department takes the position that release from detention is not appropriate on any terms and conditions, for the reasons I have just outlined to you. However, in the event that your decision on this matter is adverse to the department and detention is not continued (or ordered), the department, on behalf of the Minister, will wish to make important submissions concerning the nature and amount of security required and also as to the terms and conditions of release.

Would you care to hear my alternative submissions at this time, or would they be more appropriately heard in the event your decision on detention is adverse to the department?"

In the event that the adjudicator does not accept the danger to the public argument, you must then recommend appropriate cash bonds, performance bonds or a combination thereof as an alternative, in the order of two to three times the previously stated ($4,000.00) minimum. In addition, make alternative submissions concerning appropriate terms and conditions of release.

Always make submissions about the amount and kind of bonds which you feel are appropriate in the event the person is to be released, notwithstanding your submission that they are a danger to the public. You must seek specific and justifiable amounts.

You must advocate these positions in every detention/release situation. Your file notes must be clear, concise, legible and reflect all the actions that have been taken with regard to the file.

Remember that inappropriate release decisions of adjudicators may be subject to judicial review. Advise NHQ, litigation Directorate, of any cases where judicial review may be appropriate.

Decision makers may not always be receptive to the arguments which you are required to make and in particular, may not be inclined to set cash bonds in the amounts requested. Remember that while you may tend to feel ineffective or "invisible" arguing a position of the Minister which may not be fully accepted, it is your responsibility to accurately and fully advocate the position of the Minister regardless of the decision ultimately taken.

For a submission on the ground that the person concerned is not likely to appear for the inquiry or its continuation or for removal from Canada, these factors may apply:

- the past conduct in Canada of the person concerned
- whether the person concerned has used a pseudonym/alias to avoid detection or to evade complying with the Act and its regulations
- frequent changes of address in Canada by the person concerned

- whether the person concerned previously eluded examination or did not appear as requested
- whether the person concerned has not satisfied the conditions attached to a bond
- whether the person concerned attempted to escape or to hide, and
- the conduct of the person concerned at the inquiry.

In cases where you perceive a risk that the person concerned will not appear unless security is imposed, consider the $4,000.00 amount referred to above as a minimum amount.

7. DETENTION REVIEWS

Detention reviews that are conducted apart from an inquiry are normally held in public – subject to any rules of the detention facility – unless the adjudicator is satisfied that there is a serious possibility that the life, liberty or security of the person concerned would be endangered by a public hearing [*Pacific Press Ltd.;* APPENDIX A, case 2)]. An exception to this is an A103.1(2) or (3) detention review which is held in camera [A103.1(6)]. For more information concerning A103.1(1) cases, consult APPENDIX I.

A detention or release hearing may be held by telephone if it is impractical for the adjudicator to attend in person.

7.1 Authority to release from detention

Under A103(5), an SIO has the authority to release from detention, within 48 hours after the person is first placed in detention, any person who has been detained for examination or inquiry by completing an Authority to Release from Detention (form IMM 5023.) Such detention reviews should be documented on a Release Hearing (form IMM 1439), which records what occurred during the review.

7.2 Notifying the Adjudication Division

If the person concerned is not released by an SIO and the person's examination, inquiry or removal does not take place within 48 hours, that person is entitled to be brought before an adjudicator as soon as practicable for a review of the reasons for detention [A103(6)]. To arrange a detention review, an SIO shall forward a Reguest for an Inquiry/Detention Review Pursuant to the Adjudication Rules (form IMM 5245) to the appropriate registry of the Adjudication Division [*Adjudication Division Rules,* rule 28].

7.3 Detention review format

A detention review is not an inquiry. You are not normally expected to adduce evidence, to question the person concerned directly, nor to present documentary evidence. In the majority of cases, only a submission by each of the parties is required.

Your opening statement will be along the following lines:

> Mr./Ms. Adjudicator, in accordance with subsection 103(6) of the Immigration Act, I have brought before you Mr./Ms. _____ in order that the reasons for his/her detention may be reviewed.

The explanatory statement by the adjudicator to the person concerned might be:

> Mr./Ms. _____, under subsection 103(6) of the Immigration Act, you are entitled to a hearing in order that the reasons for your detention can be reviewed by an adjudicator. If it is determined that you do not pose a danger to the public and that you would appear voluntarily for an inquiry, you will be released pending an inquiry. Do you understand?
>
> To make this determination, I will ask the Commission's representative and you to make submissions. Do you understand?

The adjudicator will then ask you to make submissions.

7.4 No objection to release

Where you feel that continued detention is unnecessary, or when you feel the information on file is inadequate to justify continued detention, you should state in your submission that you would have no objection to release on bond subject to certain terms and conditions. You may comment on the nature and size of the bond as appropriate.

When recommending release, you must be satisfied that the guarantor is able to exercise such control over the movements of the person released that the person will report for continuation of immigration proceedings, as required. You must also assess the reliability of the guarantor; for example, if a proposed guarantor had defaulted on a previous bond, then you would be less inclined to recommend release without requiring a cash deposit.

7.5 Presenting reasons for detention

Where you feel continued detention is warranted, you could make a submission along the following lines:

> Mr./Ms. Adjudicator, it is my opinion that the detention of _____ pending inquiry should be continued. In my opinion, Mr./Ms. _____ will not appear voluntarily for an inquiry or poses a danger to the public, because:...

You may also include information contained in the arresting officer's report.

You could end the submission with the statement:

> I therefore believe that the information I have just presented constitutes reasonable grounds to believe that Mr./Ms. _____ would not report voluntarily for inquiry *or* poses a danger to the public.

You should ensure that your submissions deal strictly with issues relevant to detention or release, including the reasons behind your opinion that the person would not appear when required or would pose a danger to the public. The substantive issues of a pending inquiry normally need not be discussed, except where they are inextricably tied to the reasons for believing the person will not appear, such as an inquiry under A27(2)(f). Even in such cases, it should not be necessary to engage in direct questioning or to present evidence.

7.6 Submissions by person concerned or counsel

The adjudicator will then ask the person concerned or counsel to make submissions.

Following submissions, the adjudicator will ask if you and the person concerned or counsel have anything further to add.

Where information presented by the two parties is contradictory, the adjudicator may request clarification from either you or the person concerned. You may present any documentary evidence in your possession which supports your submission, including the arresting officer's report if necessary. On a rare occasion, it might be necessary to adduce evidence through direct questioning as a last resort.

7.7 Adjudicator's decision

The adjudicator renders a decision and orders release or continued detention.

Should the detention be continued, the person is entitled to be brought before an adjudicator at least once during the 7 days immediately following the expiration of the 48-hour period and thereafter at least once during each 30-day period following each previous review.

An SIO must notify the Adjudication Division with a Request for an Inquiry/Detention Review Pursuant to the Adjudication Rules (form IMM 5245) each and every time a detention review is necessary.

8. POST-INQUIRY PROCEDURES

8.1 Carrying out the adjudicator's decision

After the inquiry has ended, you have three specific areas of responsibility to ensure that the adjudicator's decision is carried out:

- if the adjudicator issued a removal order against the person concerned, you must give the case file to the removal unit for action
- if the adjudicator ordered the detention of the person concerned, you must annotate the file accordingly
- if the adjudicator ordered the release of the person concerned on a performance bond, you may have to assess the financial capability and ability to comply of the person who assumes the responsibility for the bond.

8.2 Applications for appeal or judicial review

If the person concerned enters an appeal against the adjudicator's decision, the adjudicator will normally be responsible for preparing and distributing the record.

The Minister may appeal an adjudicator's decision, if the decision is that the person concerned is a person who may be granted admission, or that the person concerned is not a person against whom a removal order or conditional removal order should be made [A71]. This provision covers the adjudicator's decisions both on the allegations and on whether a removal order should be issued. The appeal must be filed with the Immigration Appeal Division of the Immigration and Refugee Board within 30 days [*Immigration Appeal Division Rules*, rule 11]. The Minister's designated delegates at National Headquarters decide whether to appeal [IL 3, Instrument I-9].

Alternatively, the Minister may make an application for judicial review to the Federal Court. This circumstance arises when the Commission questions the decision of an adjudicator, but the question does not fall within the scope of A71. Two examples are a decision to release the person concerned from detention and a significant procedural error made by the adjudicator. An application to the Federal Court must be filed within 15 days [A82.1(3)].

An appeal or application for review is normally triggered when an adjudicator makes a decision contrary to the Minister's position, and your supervisor believes that an appeal or an application for judicial review is warranted. The supervisor must send a report to the Chief, Appeals Section, at National Headquarters within five days of the adjudicator's decision. The report must include both the recommendation for appeal or review and a rationale for it, together with a description of the errors of law or fact or mixed law and fact that could warrant an appeal or review. The report should also contain:

- your name and telephone number, and those of your supervisor
- the CIC file number and FOSS client ID number
- the full name and address of the person concerned, as well as the nationality, birth date, names and status of any other family members involved
- the name and address of the counsel of the person concerned
- the allegations under the *Immigration Act*
- a detailed summary of the adjudicator's decision and reasons, and
- copies of any relevant documents.

When your supervisor recommends an appeal or review, or when National Headquarters notifies the CIC that Headquarters is considering an appeal, the supervisor should get the transcript of the decision as soon as possible and send it to Headquarters.

Because of the 15-day limitation period for an application for judicial review, your supervisor must send or fax the recommendation and report to the Appeals Section within five days of the adjudicator's decision.

8.3 Prosecutions

It is the Commission's policy to refer cases involving serious violations of the *Immigration Act* to the Royal Canadian Mounted Police for further investigation and prosecution. The manager decides whether a case should be referred. If you are considering whether to bring a case to the attention of the manager for possible prosecution, please see the guidelines in IC 3.10.

9. REPORTING

Enter all relevant information in the Field Operations Support System (FOSS) for an update of the case.

10. FEEDBACK

Responding to representations

The *Privacy Act* requires that information concerning clients must be released only to the client or the client's designated representative. Prior to responding to a representation, be sure that clients or their representative reasonably verify their identity. This applies if the representation is made in person, by mail, or by telephone.

11. REFERENCES

This chapter refers to the following specific sections of the *Immigration Act*, as amended:

A3	objectives of the Canadian immigration legislation
A8(1)	requirement that the person seeking entry assume the burden of proof regarding admissibility
A19(1)(a)	provision to refuse admission to persons who, in the opinion of two medical officers, are a danger to public health or safety or who will cause excessive demands on health or social services
A19(1)(b)	provision to refuse admission to persons who are unwilling or unable to support themselves and/or dependents
A19(1)(c)	provision to refuse admission to persons who have a conviction in Canada punishable by 10 years or more
A19(1)(c.1)(i)	provision to refuse admission to persons who have a conviction outside Canada which constitutes an offence punishable by 10 years or more in Canada unless Governor in Council is satisfied as to rehabilitation and 5 years have elapsed since expiration of sentence
A19(1)(c.1)(ii)	provision to refuse admission to persons who have committed outside Canada an act or omission which is an offence in the place where it occurred and which constitutes an offence punishable by 10 years or more in Canada unless the Governor in Council is satisfied as to rehabilitation and 5 years have elapsed since expiration of sentence
A19(1)(d)	provision to refuse admission to persons who will commit an indictable offence under any Act or engage in organized criminal activity
A19(1)(e)	provision to refuse admission to persons who will engage in acts of espionage, subversion, or terrorism
A19(1)(f)	provision to refuse admission to persons who have engaged in acts of espionage, subversion, or terrorism
A19(1)(g)	provision to refuse admission to persons who will engage in acts of violence that might endanger the lives or safety of Canadians
A19(1)(h)	provision to refuse admission to persons who are not genuine immigrants or visitors
A19(1)(i)	provision to refuse admission to persons who did not obtain the consent of the Minister pursuant to A55

A19(1)(j)	provision to refuse admission to persons who have committed an act or omission outside Canada that constitutes a war crime or crime against humanity
A19(1)(k)	provision to refuse admission to persons who represent a danger to the security of Canada but are not specified in other inadmissible classes
A19(1)(l)	provision to refuse admission to senior members or officials of a government that is or was engaged in terrorism, human rights violations, war crimes or crimes against humanity
A19(2)(a)	provision to refuse admission to persons convicted in Canada, by indictment or by summary, of an offence punishable by indictment by less than 10 years
A19(2)(a.1)(i)	provision to refuse admission to persons convicted outside Canada of an offence that constitutes an offence in Canada punishable by indictment by less than 10 years unless the Minister is satisfied person is rehabilitated
A19(2)(a.1)(ii)	provision to refuse admission to persons who have committed outside Canada an act or omission that is an offence where it occurred and that constitutes an offence in Canada punishable by indictment by less than 10 years unless Minister is satisfied person is rehabilitated
A19(2)(b)(i)	provision to refuse admission to persons convicted in Canada of two or more summary convictions not arising out of same occurrence where any part of sentence was served during 5 years preceding seeking admission to Canada
A19(2)(b)(ii)	provision to refuse admission to persons convicted outside Canada of two or more offences not arising out of same occurrence that constitute summary offences in Canada where any part of the sentence was served during 5 years preceding seeking admission to Canada
A19(2)(c)	provision to refuse admission to accompanying dependents of persons refused admission to Canada
A19(2)(d)	provision to refuse admission to persons who do not comply with requirements of the Act or regulations or any orders or directions made under the Act or regulations
A19(3)	provision for SIO or adjudicator to grant entry to persons described in A19(2) for a period not exceeding 30 days
A20(1)	provision for IOs to report, to detain or to allow to leave forthwith persons who are inadmissible
A21	grounds for removal orders made on port of entry cases

A23(1)	requirement that the SIO, upon receipt of A20(1)(a) report, grant landing or authorize an immigrant to come into Canada on conditions when satisfied it would not be contrary to the Act or regulations
A23(2)	requirement that the SIO, upon receipt of A20(1)(a) report, grant entry to visitors and impose conditions, except where entry is granted pursuant to A19(3), when satisfied it would not be contrary to the Act or regulations
A23(4)	requirement that the SIO issue an exclusion order in certain circumstances
A27(1)(a)	provision to report permanent residents for specific inadmissibilities under A19(1)
A27(1)(a.1)	provision to report permanent residents convicted outside Canada of an offence punishable by 10 years or more unless Governor in Council is satisfied the person is rehabilitated and 5 years have elapsed since sentence expired
A27(1)(a.1)(ii)	provision to report permanent residents who committed outside Canada an act or omission that constitutes an offence punishable in Canada by 10 years or more unless Governor in Council is satisfied the person is rehabilitated and 5 years have elapsed since sentence expired
A27(1)(a.2)(i)	provision to report permanent residents who before landing were convicted in Canada of an indictable offence punishable by less than 10 years
A27(1)(a.2)(ii)	provision to report permanent residents who before landing were convicted in Canada of an offence which may be prosecuted by indictment and is punishable by indictment by less than 10 years
A27(1)(a.3)(i)	provision to report permanent residents who before landing were convicted outside Canada of an offence which constitutes an offence under (a.2) unless the Minister is satisfied the person is rehabilitated and 5 years have elapsed since sentence expired
A27(1)(a.3)(ii)	provision to report permanent residents who before landing committed outside Canada an act or omission that constitutes an offence under (a.2) unless the Minister is satisfied the person is rehabilitated and 5 years have elapsed since act or omission was committed
A27(1)(b)	provision to report permanent residents who have knowingly contravened terms and conditions of landing
A27(1)(d)(i)	provision to report permanent residents who have been convicted of an offence under any Act and sentenced to more than 6 months

A27(1)(d)(ii)	provision to report permanent residents who have been convicted of an offence under any Act which may be punishable by 5 years or more
A27(1)(e)	provision to report permanent residents who were granted landing by fraudulent or improper means
A27(1)(f)	provision to report permanent residents who wilfully do not support themselves or dependents
A27(1)(g)	provision to report permanent residents who have committed war crimes or crimes against humanity and who were granted landing since October 30, 1987
A27(1)(h)	provision to report permanent residents who committed war crimes or crimes against humanity since October 30, 1987
A27(2)	provisions to report persons who are not Canadian citizens or permanent residents
A27(2)(a)	provision to report persons for certain inadmissibilities under A19(1)
A27(2)(b)	provision to report persons who have accepted unauthorized employment
A27(2)(d)	provision to report persons convicted under the Criminal Code or in certain circumstances under any Act
A27(2)(e)	provision to report persons who have overstayed
A27(2)(f)	provision to report persons who did not report for or eluded examination or inquiry or escaped custody
A27(2)(g)	provision to report persons who came in and remained by fraudulent documents or means
A27(2)(h)	provision to report persons who returned without consent
A27(2)(i)	provision to report persons who cease to be Canadian citizens in certain circumstances
A27(2)(k)	provision to report persons who failed to report for further examination
A27(2)(l)	provision to report persons who wilfully fail to support a dependent
A27(2.1)	provision for reinstatement of status in certain circumstances
A27(3)	provision for Deputy Minister to forward copy of report to senior immigration officer for determination or inquiry as the case may be
A27(4)	provision for an SIO in receipt of report and direction to allow person to remain or to make departure order in certain circumstances

A27(6)	requirement that an SIO cause an inquiry if in receipt of a Direction for Inquiry or if reasonable grounds to believe that a person is described other than A27(2)(e) for A26(1)(c) or A27(2)(f),(h) or (k)
A28(1)	circumstances under which an SIO shall make conditional departure order
A29(1)	provision for an inquiry to be held in public and in the presence of person concerned where practicable unless person consents to inquiry without a hearing
A29(2)	provision for adjudicator to make such orders as considered necessary to ensure confidentiality of the inquiry
A29(3)	provision for adjudicator to take steps to ensure confidentiality of a hearing held respecting an application for confidentiality under A29(2)
A29(4)	provision for adjudicator at inquiry to appoint parent or guardian for infant or incompetent
A29(5)	provision for adjudicator at inquiry to designate, at the expense of the Minister, someone other than a parent or guardian to represent an infant or incompetent at inquiry
A30	provision requiring that persons be advised of right to counsel at inquiry and allowing for reasonable time to obtain counsel at own expense
A31(1)	provision that adjudicator give decision as soon as possible after inquiry completion
A31(2)	requirement that adjudicator inform person of basis of removal order
A32	provision for adjudicator to allow a person to come into Canada or remain in Canada in certain circumstances
A32.1	definition of "claimant"
A33	provision allowing adjudicator to include dependent family members in removal order of family member, where dependant is not a Canadian citizen or permanent resident over 19 years and where dependant has been heard at inquiry
A37(1)	provision authorizing issuance of Minister's Permit to come into or remain in Canada
40(1)	provision authorizing Governor in Council to direct Minister to issue security certificate in certain circumstances
A40.1(1)	provision allowing Minister and Solicitor General to sign and file security certificate in certain circumstances
A44(2)	requirement that refugee claim be referred to a SIO

A45(2)	requirement that an SIO determine eligibility after adjudicator determines report in cases of criminality
A46.07(5)	provision allowing SIO or adjudicator to consider allegations not previously made in determining whether a person has the right to remain in Canada under A4(2.1)
A55(1)	requirement that persons subject to deportation order obtain written consent of Minister to come into Canada unless appeal from order has been allowed
A71	provision for Minister's right of appeal on question of law and fact or mixed law and fact from the decision of an adjudicator that a person should be granted admission or is not a person against whom a removal order should be made
A82.1(3)	provision for time limits for serving and filing application for judicial review to Federal Court – Trial Division
A94(1)(f)	specifying offence for eluding inquiry or failure to attend inquiry in response to summons
A94(1)(g)	specifying offence for refusal to swear or affirm at inquiry or refusal to answer a question at examination, inquiry or hearing
A103(2)	provision for arrest without warrant for inquiry, determination or removal from Canada
A103.1(1)	provision for IO to detain to ascertain identity or because IO suspects certain inadmissibilities
A103(5)	provision for release by SIO and imposition of terms and conditions including payment of security deposit or posting of bond, within 48 hours of detention
A103(6)	provision for review of detention before adjudicator forthwith after 48 hours from first detention and thereafter within 7 days and thereafter at least every 30 days
Adjudication Rules	
Rule 7(1)	provision for application for change of venue
Rule 7(2)	requirement of statement of facts to accompany application made under rule 7(1)
Rule 8(1)	provision for application for postponement before commencement of hearing application
Rule 8(4)	factors to be considered by adjudicator in determining postponement or adjournment of a hearing
Rule 11	provision for interpreters to assist parties where party advises Adjudication Division of need therefor at least 15 days before hearing or conference
Rule 12	provision authorizing Adjudication Division to require pre-hearing conference

Rule 16	provision for adjudicator to exclude witnesses from hearing and ti prohibit communication with excluded witness until after testimony heard
Rule 17(1)	provision of means for application to summons witness
Rule 19(2)	provision for applications made under Rule 19(1) to be made orally at hearing where adjudicator is satisfied no injustice will be caused

APPENDIX A

LIST OF CASES

FCA	Federal Court of Canada, Appeal Division (Federal Court of Appeal)
FCTD	Federal Court of Canada, Trial Division
SCC	Supreme Court of Canada

1) *Dan-Ash v. Minister of Employment and Immigration*, FCA, Doc. No. A-655-86, June 21, 1988.
2) *Pacific Press Ltd. v. Minister of Employment and Immigration*, FCA, Doc. No. A-1026-90, April 22, 1991.
3) *Chana v. Minister of Manpower and Immigration*, FCTD, Doc. No. T-641-77, March 2, 1977.
4) *Dhesi v. Minister of Employment and Immigration*, FCA, Doc. No. A-503-78, December 8, 1978.
5) *Brannson v. Minister of Employment and Immigration*, FCA, Doc. No. A-213-80, April 12, 1980.
6) *Dayan v. Minister of Employment and Immigration*, FCA, Doc. No. A-456-86, March 5, 1987.
7) *Anderson v. Minister of Employment and Immigration*, FCA, Doc. No. A-267-80, June 5, 1980.
8) *Burgon v. Minister of Employment and Immigration*, FCA, Doc. No. A-17-90, February 22, 1991.
9) *Prassad v. Minister of Employment and Immigration*, SCC, File No. 19608, November 23, 1989.
10) *Pierre v. Minister of Manpower and Immigration*, FCA, Doc. No. A-936-77, April 21, 1978.
11) *Rosales v. Minister of Employment and Immigration*, FCTD, Doc. No. T-663-82, February 15, 1982.
12) *McCarthy v. Minister of Employment and Immigration*, FCA, Doc No. A-169-78, May 4, 1978.
13) *Louhisdon v. Minister of Employment and Immigration*, FCA, Doc. No. A-17-78, March 13, 1978.
14) *Murray v. Minister of Employment and Immigration*, FCA, Doc. No. A-253-78, September 15, 1978.
15) *Nelson v. Minister of Employment and Immigration*, FCTD, Doc. No. T-4924-78, November 17, 1978.
16) *Widmont v. Minister of Employment and Immigration*, FCA, Doc. No. A-899-84, December 3, 1984.
17) *Smart v. Minister of Employment and Immigration*, FCA, Doc No. A-389-89, April 4, 1991.
18) *Jiminez-Perez v. Minister of Employment and Immigration*, FCA, Doc. No. A-552-80, May 25, 1982.
19) *Green v. Minister of Employment and Immigration*, FCA, Doc. No. A-1140-82, August 19, 1983.
20) *Prassad v. Minister of Employment and Immigration*, SCC, File No. 19608, November 23, 1989.
21) *Koutsouveli v. Minister of Employment and Immigration*, FCTD, Doc. No. T-2545-87, October 5, 1988.
22) *Chhokar v. Minister of Employment and Immigration*, FCTD, Doc. No. T-1635-90, March 4, 1990.
23) *Jolly v. Minister of Manpower and Immigration*, FCA, Doc. No. A-249-74, February 13, 1975.
24) *Mercier v. Minister of Employment and Immigration*,FCTD, Doc. No. T-1512-85, November 17, 1986.
25) *Grewal v. Minister of Employment and Immigration,* FCA, Doc. No. A-42-80, May 7, 1980.
26) *Georgas v. Minister of Employment and Immigration*, FCA, Doc. No. A-424-78, September 28, 1978.
27) *Cembranos-Alvarez v. Minister of Employment and Immigration*, FCA, Doc. No. A-267-82, June 6, 1983.
28) *Rios v. Minister of Employment and Immigration*, FCA, Doc. No. A-5-90, July 4, 1990.
29) *Kalacharan v. Minister of Employment and Immigration*, FCTD, Doc. No. T-750-76, March 24, 1976.
30) *Wilson v. Minister of Employment and Immigration*, FCA, Doc. No. A-224-80, June 18, 1980.

31) *Clarke v. Minister of Employment and Immigration*, FCA, Doc. No. A-588-84, October 31, 1984.

32) *Steward v. Minister of Employment and Immigration* [*Steward No. 3*], FCA, Doc. No. A-962-87, April 15, 1988.

33) *Mohammad v. Minister of Employment and Immigration* [*Mohammad No. 1*], FCTD, Doc. No. T-150-88, March 11, 1988.

34) *Mohammad v. Minister of Employment and Immigration* [*Mohammad No. 3*], FCA, Doc. No. A-362-88, December 8, 1988.

35) *Hill v. Minister of Employment and Immigration*, FCA, Doc. No. A-514-86, January 29, 1987.

36) *Mak v. Minister of Employment and Immigration*, FCA, Doc. No. A-149-83, September 19, 1983.

37) *Robertson v. Minister of Employment and Immigration*, FCA, Doc. No. A-235-78, September 11, 1978.

38) *Davis v. Minister of Employment and Immigration*, FCA, Doc. No. A-81-86, June 19, 1986.

39) *Arnow v. Minister of Employment and Immigration*, FCA, Doc. No. A-599-81, September 28, 1981.

40) *Kai Lee v. Minister of Employment and Immigration*, FCA, Doc. No. A-11-79, June 20, 1979.

41) *Potter v. Minister of Employment and Immigration*, FCA, Doc. No. A-560-79, December 5, 1979.

APPENDIX B

RULES OF EVIDENCE

Administrative tribunals are not bound by the strict rules of evidence that are found in judicial proceedings. However, they must observe the principles of fundamental justice.

1. THE ADMISSIBILITY OF EVIDENCE

In judicial proceedings strict rules govern the admissibility of evidence. The two basic rules are:

- the best evidence rule, which requires that the evidence presented be the best evidence available (this means that secondary evidence should not be introduced unless primary evidence is unavailable), and
- the rule against hearsay evidence. Hearsay evidence is testimony given by a witness, offered as proof of the truth of the matters contained in the testimony, which is not the personal knowledge of the witness but rather the mere repetition of what the witness heard others say. Such evidence is very weak, since the real author of the statement put in evidence is not available for cross-examination and therefore the credibility of the statement and its author cannot be tested.

At an immigration inquiry any evidence considered by the adjudicator to be relevant, credible, and trustworthy in the circumstances of the case is admissible. In the examination of the evidence presented, the adjudicator will determine its weight or value in all the circumstances of the case. You are to follow the best evidence rule. Generally, adjudicators will accept hearsay evidence, but they will attach very little significance to it if contradictory evidence is offered by either party.

2. THE RELEVANCE OF EVIDENCE

The adjudicator will normally consider relevant any evidence that reasonably tends to prove the fact in dispute; that is:

- evidence which places a fact in a context which tends to show its relevance
- evidence relating to credibility, and
- evidence that proves a precondition for the presentation of a fact: for example, evidence that a statement was made freely and voluntarily.

3. THE WEIGHT OF EVIDENCE

The weight of evidence is its *probative value*, or importance, and the extent to which it establishes a fact before the tribunal. The stronger the inference that can be derived from the evidence, the higher the probative value. A number of pieces of evidence, each of low probative value, may be more significant when considered in the overall context of the inquiry than a single piece of evidence that seemingly had very high probative value.

Admissibility of evidence and *probative value* are two different matters. A document of low probative value may still be admissible into evidence if it is relevant.

Secondary or hearsay evidence may not have the same weight when better evidence is available. For example, if you used a statutory declaration made by an IO who is reasonably available to testify, you would be depriving the subject of the inquiry of the opportunity to cross-examine; thus you would be detracting from the quality of the evidence.

As a general rule, you should attempt to secure the best evidence whenever possible. When this is not possible, or would be prohibitively expensive, or would cause major administrative difficulties, you may ask the adjudicator to accept secondary evidence.

In your decision to rely on primary or secondary evidence you should take into account factors such as the importance of other aspects of the case, and the need to avoid lengthy detention while awaiting the best evidence. You should also keep in mind that the weaker your evidence in relation to evidence of the subject of the inquiry, the greater the possibility that the adjudicator will admit the person concerned to Canada or allow the person concerned to remain here.

In other words, these are the main points to consider when you are assessing the available evidence:

- is this evidence relevant?
- what facts are established or can be deduced from this evidence?
- what is its weight?

4. THE DIFFERENT TYPES OF EVIDENCE

4.1 Direct evidence

Direct evidence is a means of proof which tends to show the existence of a fact in question without the intervention of the proof of any other fact. Put another way, direct evidence is evidence of a precise fact in issue by witnesses who can testify that they saw the act done or heard the words spoken which constitute the precise fact to be proved.

Direct evidence may take the form of the oral testimony of witnesses or evidence which consists of documents or objects, introduced through the oral testimony of witnesses.

An example of direct evidence used to establish a fact or the facts in issue would be the testimony of an IO that he or she observed the subject of an allegation under A27(2)(b) waiting on tables in a specific restaurant over a specific time period. This evidence, if the truth of it were accepted by the adjudicator, would conclusively establish one of the essential elements of A27(2)(b).

You should always introduce documents or objects into evidence by first establishing a link between the document or object and the witness and secondly, establishing the relevance of the document or object to the issue you wish to prove.

For example, if you wish to introduce a passport or other documents purporting to belong to the subject of the inquiry, present the document to the person and ask that it be identified for the adjudicator. If the witness is unable or refuses to identify the document, you may need to call an immigration official to establish a link between the document and the subject of the inquiry.

After establishing the link, you may then ask questions to establish the relevance of the document to the issue you wish to prove.

4.2 Circumstantial evidence

Circumstantial evidence is evidence not based on actual personal, direct knowledge or observation of the facts in issue. Rather, it is indirect evidence, the sum of which can lead an adjudicator to conclude that a fact which could not be established by direct evidence, has been established by inference.

Circumstantial evidence may consist, for example, of evidence of motive, opportunity, intent, character or previous activities. Such circumstances, taken alone, may not carry enough weight to persuade the adjudicator of the allegation; however, when argued in combination, they may be sufficient to tip the balance of probabilities.

4.3 Presumption

Since it is almost impossible in many cases to prove certain facts, the rules of evidence provide that certain facts may be presumed to be true. Two types of presumption may apply:

- deductions of fact that are deductions or conclusions that can be drawn from the circumstantial evidence submitted, and
- presumptions under the Act: for example, A8(2).

4.4 Judicial notice

Judicial notice is the recognition by a judicial tribunal that a fact is true, without its having to be proved, on the basis that this fact is known to the tribunal.

Adjudicators may use judicial notice for facts generally known to everyone. For example, an adjudicator may take judicial notice of any fact relating to the adjudicator's profession, such as the duties of an adjudicator, the *Immigration Act*, and the Regulations. Adjudicators may not take judicial notice of a fact known as a result of purely personal knowledge.

5. DOCUMENTARY EVIDENCE AND TESTIMONY

5.1 Documentary evidence

You will often use documents in immigration cases to establish an allegation or allegations. If you use them appropriately, presenting documents in evidence can speed up the process. Generally speaking, an adjudicator may accept any documentary evidence if it is admissible (relevant, credible and trustworthy), subject to its probative value.

Official documents - such as passports and certified court documents - generally have more weight than unofficial documents.

Originals usually have more weight than copies, unless the copy is a duplicate copy (a signed copy of the original) or a certified true copy produced or issued by a competent authority. The best evidence rule dictates that you should submit the original of a document. If this is impossible, secondary evidence becomes the best evidence. You should verify that the documents that you wish to introduce at an inquiry refer to the person concerned.

5.2 Statutory declarations

You may occasionally introduce statutory declarations into evidence. An adjudicator must receive statutory declarations at an inquiry, because they are equivalent to testimony under oath [*Canada Evidence Act*, s. 14(2)]. However, a statutory declaration may be of less probative value than the oral testimony of the author, because the credibility of the author of the statutory declaration cannot be tested by cross-examination.

You may use a statutory declaration when the declarant's testimony would not likely be tested on cross-examination: for example, the declaration of a person concerning a recorded fact such as the date of admission to Canada.

5.3 Testimony

The best form of testimony is that given by a witness relating facts of which the witness has personal knowledge. Positive evidence - facts that the witness actually observed or knew - carries more weight than negative evidence (that which was not seen or is unknown). Direct evidence is preferable to circumstantial evidence, and opinion evidence has value only if an expert gives it. Hearsay evidence, while possibly admissible (if relevant), carries little or no weight.

APPENDIX C

CLAIMS TO CANADIAN CITIZENSHIP

1. DEALING WITH A REQUEST FOR ADJOURNMENT TO EXAMINE A CLAIM TO CANADIAN CITIZENSHIP

Under A41(2), where an inquiry is adjourned for examination of a claim to Canadian citizenship, the Commission must inform the Minister responsible for administering the *Citizenship Act*. A41(2) also provides that the claimant is responsible for making an application for a citizenship certificate as soon as possible under subsection 12(1) of the *Citizenship Act*.

Immediately following an inquiry adjourned because the person concerned claims Canadian citizenship, complete the Notification of Adjournment of Immigration Inquiry to Verify Claim to Canadian Citizenship (form IMM 1328), as follows:

- fill in all details of the claimant, location of the inquiry, local file number, date and complete Canada Immigration Centre address in the spaces provided
- in paragraph 1 of the form, check the first box only if a citizenship court is readily available to the claimant, and include the *complete* address of the court in the space provided
- check the second box only if a citizenship court is not readily available, and attach an Application for a Certificate of Citizenship completed by the claimant (supplies of this form are available from the Registrar of Canadian Citizenship, Citizenship Registration and Promotion, Department of Multiculturalism and Citizenship, Ottawa, Ontario K1A OM5)
- in paragraph 2 of the form, check the appropriate box, depending on where the claimant has been referred
- when you enter the date in paragraph 3 of the form, allow the claimant seven days to provide the required proof (if the CIC does not have a supply of the Application for a Certificate of Citizenship form, give the claimant appropriate additional time to obtain a form from the Registrar of Canadian Citizenship)
- sign the form, give copy 1 to the claimant, and retain the remaining three copies on the file.

2. ACTION FOLLOWING THE SPECIFIED TIME PERIOD

If you receive documentary proof of the filing of the application within the specified time period, check the appropriate box on the remaining three copies of the Notification of Adjournment form, and send copy 2 to the Registrar of Canadian Citizenship at the address shown on the form.

Allow a reasonable period for a reply from the Registrar. If there is a lengthy delay, or if the Registrar advises that there will be some delay in reaching a decision, it is your responsibility to ensure that appropriate follow-up action is taken until a decision is rendered by the Registrar. A reasonable period of time would be three months. You should make the appropriate bring-forward note on your files.

If the claimant has not provided documentary proof of the filing of the application as required within the specified time period, check the appropriate box on the remaining copies of the form, send copy 2 to the Registrar at the address shown on the form, and speak to the adjudicator to arrange for the resumption of the inquiry.

3. RESUMPTION OF THE INQUIRY

In cases where documentary proof is not provided within the specified time period, or on being informed by the Registrar of Canadian Citizenship that a certificate will not be issued, present the Registrar's reply (where applicable) and copies 3 and 4 of the Notification of Adjournment form to the manager of the CIC.

If the manager is satisfied that all the documentation is in order, the manager will sign in the appropriate space on copies 3 and 4 of the form, and will return copy 3 to you for presentation to the adjudicator at the resumed inquiry. Copy 4 is retained on the local file.

4. CERTIFICATE OF CITIZENSHIP ISSUED

If the Registrar issues a certificate of citizenship, the inquiry will be terminated immediately under A42(1).

5. URGENT CASES

Notwithstanding these procedures, there may be occasions when urgency dictates that direct assistance from the local citizenship court is necessary to prove citizenship. In such cases, refer the Application for a Certificate of Citizenship to the local court with a special request. The court will provide you with a letter indicating whether or not the person is a Canadian citizen. The court will make such confirmations only after consultation with the Registrar of Canadian Citizenship, and the letter must indicate that it has done so. When you receive confirmation, the inquiry is to be terminated.

APPENDIX D

EVIDENCE REQUIREMENTS FOR SPECIFIC ALLEGATIONS

1. GENERAL

The standard of proof in immigration matters is the "balance of probabilities". The evidence on the whole must show that the facts in issue are more probable than not.

The term "reasonable grounds" occurs in several of the paragraphs of A19. Reasonable grounds can be described as a set of facts and circumstances which would satisfy an ordinary cautious and prudent person, and which are more than mere suspicion. Consequently you should present as evidence all evidence that would lead a reasonable person to a certain conclusion.

2. EVIDENCE FOR INADMISSIBLE CASES

When you are working with A19, you should bear in mind that you must prove every element of the allegation.

2.1 A19(1)(a)

Paragraph 19(1)(a) describes persons who are inadmissible to Canada for medical reasons.

The evidence you require in such cases is a report signed by one medical officer, and concurred in by another, which finds that the person concerned is or is likely to be for medical reasons:

- a danger to public health, or
- a danger to public safety, or
- a person whose admission would cause or might reasonably be expected to cause excessive demands on health or social services, within the meaning assigned to that expression by the regulations, on health and prescribed social services.

A designated medical officer is a doctor designated by the Minister of National Health and Welfare as medical officer for the purposes of the *Immigration Act* [A2(1)].

The medical officer's opinion must be supported by at least one other medical officer. If there is only one signature on the medical report, you must take the necessary action to obtain a second medical officer's opinion, either in writing or as oral evidence presented at the inquiry.

The factors a medical officer must take into account in giving an opinion on this question will be defined by regulations adopted under the authority of A114(1)(m). Regulations adopted under the authority of A114(1)(m.1) will deal with the designation of social services for the purposes of A19(1)(a)(ii). The Governor in Council also has the authority to exempt classes of immigrants from the application of A19(1)(a)(ii) [A114(1)(m.2)].

The concept of excessive demand will be defined in national lists of services that are in short supply, and by establishing limits to costs.

Under A46.04(3), the provisions governing inadmissibility on medical grounds do not apply to Convention refugees *as it pertains to their admissibility for landing.*

2.2 A19(1)(b)

Paragraph A19(1)(b) applies to persons "where there are reasonable grounds to believe" are not able or do not wish to support themselves or their dependants, except those persons who can demonstrate that adequate arrangements have been made for their care and support. Adequate arrangements do not include receiving social welfare.

In the past, persons who were in Canada temporarily and receiving welfare were in some cases successful when they argued that they should not be removed because they were receiving social assistance, and consequently had made the necessary arrangements to support themselves. A19(1)(b) is now designed to exclude persons intending to live or living on social assistance, and to prevent abuse of the social service systems.

To prove inadmissibility, you must establish by prudent questioning:

- that the person is unable or unwilling to support himself or herself and his or her dependants, and
- that the person has not established to the satisfaction of the IO that appropriate arrangements (that do not include receiving welfare or social assistance) have been made for his or her care and support.

If the person concerned is receiving welfare or social assistance, you should obtain a letter to this effect from the appropriate authorities for use at the inquiry.

Under A46.04(3) this provision does not apply to Convention refugees who receive welfare, insofar as it cannot be used to deny landing.

2.3 A19(1)(c), A19(1)(c.1) and A19(1)(c.2)

Paragraphs A19(1)(c), A19(1)(c.1) and A19(1)(c.2) refer to serious crimes (indictable offences) punishable by imprisonment of ten years or more.

A19(1)(c) refers to convictions for offences committed in Canada that may be punishable under any Act of Parliament by a maximum term of imprisonment of ten years or more.

The provisions also apply to persons who there are reasonable grounds to believe:

- have been convicted *outside Canada* of an offence that, if committed in Canada, would constitute an offence that may be punishable under any Act of Parliament by a maximum term of imprisonment of ten years or more [A19(1)(c.1)(i)], or
- have committed *outside Canada* an act or omission that constitutes an offence under the laws of the place where the act or omission occurred and that, if committed in Canada would constitute an offence that may be punishable under an Act of Parliament by a maximum term of imprisonment of ten years or more [A19(1)(c.1)(ii)], or
- are or were members of an organization that there are reasonable grounds to believe is or was engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of any offence under the *Criminal Code*, the *Narcotic Control Act* or Part III or IV of the *Food and Drugs Act* that may be punishable by way of indictment or in the commission outside Canada of an act or omission that, if committed in Canada, would constitute such an offence [A19(1)(c.2)].

Persons found to be inadmissible under A19(1)(c.1) can request that an exception be made in their case about their future admissibility. They must satisfy the Governor in Council that they have rehabilitated themselves and that at least five years have elapsed since the expiration of any sentence imposed for the offence or since the commission of the act or omission, as the case may be.

Persons described in A19(1)(c.2) must convince the Minister that their admission to Canada would not be detrimental to the national interest.

To establish inadmissibility under **A19(1)(c)** you may present the following evidence:

- the indictment, commonly called the information, which contains the accusations against the accused
- a conviction certificate
- the text of the Canadian legislation under which the person was convicted, to demonstrate that the offence is punishable under an Act of Parliament by a maximum term of imprisonment of ten years or more. Even if the adjudicator may take judicial notice of the Canadian legislation, you should produce a photocopy of the text of the legislation concerned.
- the testimony of witnesses or declarations of the person concerned. This method of establishing inadmissibility (used in the absence of documentary evidence) is the least desirable, as the person concerned often cannot recite the exact details of the conviction, which in turn makes the process of establishing equivalency very difficult.
- any other documentary evidence which may assist in the process.

For a person to be found described in **A19(1)(c.1)**, it is sufficient that there exist reasonable grounds to believe that there has been a conviction or the commission of an offence or an act or omission. The testimony of the person concerned (or of witnesses, or a statutory declaration outlining the details of a telephone conversation with a custodian of criminal records in a foreign country) may suffice, where it is impossible to obtain certificates of conviction. Appropriate evidence includes:

- documentary evidence (such as a certificate of conviction or other document) or any other credible and trustworthy information
- evidence of an act or omission demonstrating that the person is inadmissible under A19(1)(c.1)(ii). This may be secret or classified reports or a certificate under A40.1. For these types of cases, you should always contact Case Management Branch, Security Review, at National Headquarters (tel.: 819-994-6306).
- texts of both the Canadian and the foreign legislation, to establish an equivalence
- evidence that the Governor in Council has not indicated satisfaction that the person concerned has been rehabilitated, and that at least five years have elapsed since either the termination of the sentence imposed for the offence or the commission of the act or omission, as the case may be.

Because the standard of proof is *reasonable grounds to believe*, appropriate evidence for cases under **A19(1)(c.2)** includes:

- documentary evidence, testimony of the person concerned, witnesses, or newspaper clippings that detail the crime or conviction. Evidence showing that the person is inadmissible may be classified information reports or a certificate under A40.1. For these types of cases, you may contact Case Management Branch, Security Review, at National Headquarters (tel. 819-994-6306).
- evidence that the Minister has not indicated that the admission of the person would not be detrimental to the national interest.

2.4 A19(1)(d)

Paragraph A19(1)(d) describes persons who there are reasonable grounds to believe will commit one or more offences punishable by way of indictment under any Act of Parliament; or will engage in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of any offence that may be punishable under any Act of Parliament by way of indictment.

Evidence that there are reasonable grounds to believe that the person seeking admission to Canada is described in this paragraph will usually take the form of security reports or an A40.1 certificate. For these types of cases, you may contact Case Management Branch, Security Review, at National Headquarters (tel. 819-994-6306).

2.5 A19(1)(e)

The purpose of paragraph A19(1)(e) is to render persons inadmissible who there are reasonable grounds to believe will engage in any activity that constitutes a threat to security or who are members of an organization that there are reasonable grounds to believe will engage in such activities.

This provision is limited to possible future activities that constitute or would constitute a threat to security, such as acts of espionage or subversion against democratic government, institutions or processes as they are understood in Canada; instigation of subversion by force of any government; and terrorist acts.

In most cases security reports or certificates under A40.1 constitute evidence that a person is described in this paragraph. You should refer any cases of this nature to Case Management Branch, Security Review, at National Headquarters (tel. 819-994-6306).

2.6 A19(1)(f)

Paragraph A19(1)(f) renders inadmissible those persons who there are reasonable grounds to believe have engaged in acts that could constitute a threat to security, such as acts of espionage or subversion against democratic government, institutions or processes as they are understood in Canada, or terrorism. It also includes persons who are or were members of an organization that there are reasonable grounds to believe is or was engaged in such activities.

If the Minister is convinced that the admission of a person will not be detrimental to the national interest, an exception may be made to allow the person to come into Canada.

In most cases security reports or certificates under A40.1 constitute evidence that a person is described in this paragraph. You should refer any cases of this nature to Case Management Branch, Security Review, at National Headquarters (tel. 819-994-6306).

2.7 A19(1)(g)

Paragraph A19(1)(g) refers to persons who there are reasonable grounds to believe will engage in acts of violence that would or might endanger the lives or safety of persons *in Canada*, or who are members of or are likely to participate in the unlawful activities of an organization that is likely to engage in such acts of violence.

In most cases security reports or certificates under A40.1 will constitute evidence showing that a person is described in this paragraph. You should advise Case Management Branch, Security Review, at National Headquarters of any cases of this nature (tel. 819-994-6306).

2.8 A19(1)(h)

Paragraph A19(1)(h) refers to persons who, in the opinion of an adjudicator, are not genuine immigrants or visitors. The person concerned may fall within this class of inadmissible persons for one or the other of these reasons, but never both at the same time.

The paragraph is designed to allow for the exercise of some control over the illegal migration of persons who attempt to enter Canada as visitors, but who intend to remain here indefinitely. It also applies to persons who do not intend to settle permanently in Canada but seek permanent resident status solely for commercial or financial purposes.

During the examination or cross-examination of an A19(1)(h) case, you may wish to explore the following areas of interest:

- the person's reasons for coming, such as the purpose of the trip, and the person's interests in Canada, links with Canada, preparation for trip, and knowledge of Canada
- the duration of the stay, such as the time requested, the reason, and the plans for the stay
- the person's resources, including financial resources, transport (the form of payment, whether there is a return ticket, and means of transportation during the stay), assistance in Canada, and a socio-economic profile of the person concerned
- the person's reasons for returning, such as economic reasons (employment, legal responsibilities), family reasons (family obligations, family status), and social and political reasons (military service, whether the person is sought by the police, and the political situation in the country of nationality or citizenship).

2.9 A19(1)(i)

Paragraph A19(1)(i) refers to persons seeking entry to Canada without obtaining the consent of the Minister under A55(1) (deportation order) and A55(2) (exclusion order).

Evidence demonstrating inadmissibility under this paragraph would include:

- evidence that the person concerned has been ordered excluded, deported, or has received a departure notice or order under this Act or any earlier *Immigration Act*.

  Note: If the person concerned does not comply with a departure notice before February 1, 1993, the departure notice shall be deemed to be a deportation order on the later of the expiration of ninety days after the day section 113 of the Transitional Provisions of the Immigration Act (as amended by Bill C-86) comes into force, or the period specified in the departure notice for the person to leave Canada.

  This evidence may be presented by asking questions or filing a certified true copy of the removal order;

  and

- evidence in the form of either an admission by the person concerned or the decision of the Immigration Appeal Division that no appeal against the removal order has been allowed;

and

- evidence that the person concerned has been removed or has left Canada

  Note: The courts have held that the voluntary departure of a person who is the subject of an uneffected removal order cannot be achieved without the permission of the Minister [Mercier; Appendix A, case 24]. This reasoning was drawn from the wording of A54 (now A52) of the Act, and it was held that having not first obtained the permission of the Minister, the person concerned could not be considered to have executed the removal order himself or herself.

or

- evidence that, in the case of a person who has been issued a departure order, the person has not left Canada voluntarily (or has not been removed under A32.01) within the applicable 30-day period specified in the regulations for the purposes of A32.02(1).

  Note: If the person concerned was under a departure order and was in detention before the date of expiration of the order, you must bring forward evidence that the person was not in detention on the expiry date of the order.

  You can establish either of these alternatives through an admission of the person concerned or by filing a true copy of the notice of confirmation of departure;

and

- an admission by the subject or a document or telex from headquarters stating that there is no indication that the Minister authorized the person concerned to return to Canada.
- in the case of a person excluded under the Act, evidence that less than 12 months have elapsed between the day following the day on which the person left Canada and the date that the person again seeks entry. You should note, however, that *at the time of the adjudicator's decision* the individual must be a member of an inadmissible class, and therefore action under this paragraph must have commenced and been terminated with an adjudicator's decision within the 12-month period [*Grewal,* Appendix A, case 25].

2.10 A19(1)(j)

Paragraph A19(1)(j) refers to persons who there are reasonable grounds to believe have committed an act or omission *outside Canada* that constituted a war crime or a crime against humanity within the meaning of subsection 7(3.76) of the *Criminal Code* that would have constituted an offence against the laws of Canada *in force at the time of the act or omission*.

Subsection 7(3.76) of the *Criminal Code* defines war crimes and crimes against humanity as follows:

> "War crimes": means an act or omission that is committed during an international armed conflict, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission, and that, at that time and in that place, constitutes a contravention of the customary international law or conventional international law applicable in international armed conflicts.
>
> "Crime against humanity": means murder, extermination, enslavement, deportation, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group of persons, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission, and that, at that time and in that place, constitutes a contravention of customary international law or conventional international law or is criminal according to the general principles of law recognized by the community of nations.

Evidence that would lead an adjudicator to conclude that a person is described in A19(1)(j) would generally take the form of security reports or a certificate issued under A40.1. For these types of cases, you should contact Case Management Branch, Security Review, at National Headquarters (tel. 819-994-6306).

Evidence that may help to establish inadmissibility under this paragraph includes:

- a certificate under A40.1 for the person concerned
- documentary evidence or testimony establishing that the person concerned was convicted of an offence outside of Canada, referred to or equivalent to subsection 7(3.76) of the *Criminal Code*, and

- an admission by the person concerned or any other credible and trustworthy evidence that he or she committed an offence referred to in subsection 7(3.76) of the *Criminal Code*.

2.11 A19(1)(k)

Paragraph A19(1)(k) refers to persons who constitute a danger to the security of Canada, but who are not members of a class described in A19(1)(e), A19(1)(f) or A19(1)(g).

When a person is the subject of an inquiry, written certification from the Minister and the Solicitor General of Canada must be issued in accordance with A40 or A40.1, depending on the status of the person concerned. For a case of this nature, you should contact Case Management Branch, Security Review, at National Headquarters (tel. 819-994-6306).

2.12 A19(1)(l)

Paragraph A19(1)(l) refers to persons who are or were senior members or senior officials in the service of a government that in the opinion of the Minister is or was engaged in terrorism, systematic or gross human rights violations or war crimes or crimes against humanity within the meaning of subsection 7(3.76) of the *Criminal Code*. This paragraph concerns persons who, by virtue of the position they hold or have held, are or were able to exert a significant influence on the exercise of government power. A19(1.1) defines "senior members".

Where the Minister is convinced that the entry of these persons would not be detrimental to the national interest, they may be allowed to enter.

Generally in this type of case security reports from various police or intelligence agencies will serve as evidence. An A40.1 certificate could be issued in these circumstances and would serve as evidence that the person concerned was described in the allegations. For all these cases you should contact Case Management Branch, Security Review, at National Headquarters (tel. 819-994-6306).

2.13 A19(2)(a) and 19(2)(a.1)

Paragraph **A19(2)(a)** refers to persons who have been convicted *in Canada* of an indictable offence, or of an offence for which the offender may be prosecuted by indictment or for which the offender is punishable on summary conviction, that may be punishable by way of indictment under any Act of Parliament by a maximum term of imprisonment of less than ten years.

Paragraph **A19(2)(a.1)** refers to persons who there are reasonable grounds to believe have been convicted *outside Canada* of an offence, or have committed an act or omission that constitutes an offence under the laws of the place where the act or omission occurred, and that, if committed in Canada, would constitute an offence that may be punishable by way of indictment under any Act of Parliament by a maximum term of imprisonment of less than ten years.

Persons described in A19(2)(a.1) can request that an exception be made in their case. They have to satisfy the Minister that they have rehabilitated themselves and that at least five years have elapsed since the expiration of any sentence imposed for the offence or since the commission of the act or omission, as the case may be. Changes to this section in the *Immigration Act*, as amended, have made case law such as *Kai-Lee* inoperable [Appendix A, case 40].

To demonstrate inadmissibility under A19(2)(a), you should present the following evidence:

- for an A19(2)(a.1)(i) case, evidence of a certificate of conviction. For further information on establishing inadmissibility, see section 2.3 above concerning A19(1)(c), A19(1)(c.1) and A19(1)(c.2).
- for an A19(2)(a.1)(ii) case, evidence that constitutes reasonable grounds to believe that the person concerned committed an act or omission outside of Canada. Evidence of this nature may well take the form of security or police reports that substantiate the allegation. For a case of this nature, you should contact Case Management Branch, Security Review, at National Headquarters (tel. 819-994-6306).
- the text of the foreign legislation (in the case of an offence committed abroad), and the text of the Canadian legislation, to establish equivalence and to prove that the offence is punishable under an Act of Parliament by way of indictment and may be punishable by imprisonment for a maximum term of less then ten years.
- for offences committed abroad only, evidence that the person concerned has not satisfied the Minister concerning rehabilitation and that five years have not passed since the expiration of any sentence imposed or since the commission of the act or omission, as the case may be.

2.14 A19(2)(b)

Paragraph A19(2)(b) refers to persons who have committed minor but repeated offences and have been convicted in Canada or abroad, but does not include acts or omissions. The Act no longer makes a distinction on the basis of age. A19(2)(b) covers two categories of persons:

- persons who have been convicted *in Canada* under any Act of Parliament of two or more summary conviction offences not arising out of a single occurrence, where any part of the sentences imposed for the offences was served or to be served at any time during the five-year period immediately preceding the day on which they seek admission to Canada.
- persons who there are reasonable grounds to believe have been convicted *outside of Canada* of two or more offences, not arising out of a single occurrence, that if committed in Canada, would constitute summary conviction offences under any Act of Parliament, where any part of the sentences imposed for the offences was served or to be served at any time during the five-year period immediately preceding the day on which they seek admission to Canada.

You should present the following evidence:

- evidence that the person concerned has been convicted on at least two occasions of summary conviction offences, such as the information, conviction certificate or admission of the person concerned
- in 19(2)(b)(i) and 19(2)(b)(ii) cases, the text of the Canadian legislation
- in 19(2)(b)(ii) cases, the text of the foreign legislation in the case of an offence committed abroad and the equivalent Canadian legislation
- evidence that the convictions do not arise from the same occurrence
- evidence that all or part of the sentence imposed has been served or was to have been served in the five years preceding the date of the request for admission.

2.15 A19(2)(c)

Paragraph A19(2)(c) is meant to be used for persons accompanying a family member who is inadmissible.

For a person to be declared inadmissible under A19(2)(c), you must establish at the inquiry that the person is a member of a "family" as defined in the Act or in R2(2) of the regulations, and in the case of visitors, that the family member is dependent on the person concerned. Usually this evidence will take the form of testimony given by the family members and the head of the family about the relationship and dependence. In some cases you may corroborate the relationship by information shown in the passport or travel documents.

2.16 A19(2)(d)

Paragraph A19(2)(d) applies primarily to persons who do not satisfy the conditions or requirements imposed by the Act or the Regulations: for example, the fact that they do not have a visa, passport or have not undergone medical examination. This provision should not be dissociated from the other sections of the Act and regulations. It should not be relied upon if there is a more specific ground of inadmissibility. For example, a deported person who seeks admission without the Minister's permission is inadmissible under A19(1)(i), and not A19(2)(d) and A57.

The type of evidence that you bring forward will depend on the actual allegation.

2.17 Loss of residence

The *Immigration Act* as amended by Bill C-86 includes significant modifications to A24. The concept of "intention to reside" has been replaced with the notion of "ordinarily reside". The 183-day outside-of-Canada presumption no longer exists.

Section 25.1 defines in which circumstances a person ceases to be a permanent resident as follows:

- the fact of ceasing to ordinarily reside in Canada, with the exception of those situations outlined in the regulations, and
- when a person has had a removal order made against him or her, and that order is not quashed or its execution is not stayed under A73(1).

The concept of "ordinarily reside" has both a subjective and objective component. It will not suffice that the person concerned demonstrate that he or she has kept a residence of some sort in Canada. The person concerned will have to demonstrate a physical and permanent presence in Canada. Regulations will outline

examples of situations where a prolonged absence from Canada will or would not normally cause the loss of permanent resident status. Permanent residents who leave Canada before the coming into force of A25 will be subject to the provisions of the law as it read before these modifications were made.

Section 25 is not expected to become operable before January 1994. Therefore the old provisions of the Act will apply in the meantime, such as the presumption of loss of residence after a 183-day or more absence from Canada, and the concept of intention of abandoning Canada as a place of permanent residence.

In the case of a permanent resident who leaves Canada before the coming into force of A25, a permanent resident of Canada who is abroad for more than 183 days is deemed to have abandoned Canada as his or her place of permanent residence, unless the person satisfies an IO or an adjudicator, as the case may be, that they did not intend to abandon Canada as their place of permanent residence. Two elements must be present to conclude that a person is deemed to have abandoned Canada as their place of permanent residence:

- the physical presence outside of Canada of the person concerned, and
- the intention to live outside of Canada permanently.

The possession of a valid returning resident permit, described under A25 of the former *Immigration Act*, established proof in the absence of evidence to the contrary that the person did not leave or remain outside Canada with the intention of abandoning Canada as the person's place of permanent residence.

In examining loss of residence, you may take the following into account:

- details about the obtention of landing, such as the immigrant record, application for returning resident permit and record of renunciation of permanent residence (abandonment)
- links with Canada, such as employment, property (house, land, car and so forth), funds (bank account), family, and whether these links were maintained during the absence
- circumstances surrounding the departure, such as the date, reason, destination, period spent outside Canada, and intention upon leaving
- links with a foreign country, such as employment, property, funds, and family
- any extenuating circumstances in a case of lengthy absence, such as professional obligations, professional promotion or education, war, and sickness, and
- the reasons for returning to Canada, such as family ties and employment.

3. EVIDENCE FOR A27(1) CASES

You must be fully aware that the burden of proof in A27 cases lies with the Commission.

In all cases under A27(1) you must establish during the course of the inquiry that the person concerned is a permanent resident of Canada. In most cases the evidence will take the form of the original or a certified true copy of the landing record. You must also establish that the person concerned has not obtained Canadian citizenship. The remainder of the inquiry would then be devoted to establishing the particular allegations discussed below.

3.1 A27(1)(a)

Paragraph A27(1)(a) applies to permanent residents who are members of an inadmissible class described in 19(1)(c.2), 19(1)(d), 19(1)(e), 19(1)(f), 19(1)(g), 19(1)(k) or 19(1)(l). It applies to permanent residents who there are reasonable grounds to believe are or were members of an organization that there are reasonable grounds to believe is, was or will be engaged in the commission of a criminal offence, in terrorism, in acts of espionage or will engage in or instigate the subversion by force of any government, or who have engaged in such activities.

It also applies to permanent residents who there are reasonable grounds to believe have engaged in activities related to organized crime, who constitute a danger to the security of Canada, or permanent residents who, at a senior level, are or have been in the service of a government that is or was engaged in terrorism, systematic or gross human rights violations or war crimes or crimes against humanity.

Generally, in this type of case security reports from various police or intelligence agencies will serve as evidence, or a section 40(1) certificate could be issued. For all cases of this nature, you should contact Case Management Branch, Security Review, at National Headquarters (tel. 819-994-6306).

For A27(1)(a) cases, follow the guidelines included above in this appendix for 2.3, 2.4, 2.5, 2.6, 2.7, 2.11, and 2.12.

3.2 A27(1)(a.1)

Paragraph A27(1)(a.1) applies to permanent residents who have been convicted *outside Canada* of an offence that, if committed in Canada, constitutes an offence that may be punishable under any Act of parliament by a maximum term of imprisonment of ten years or more.

This paragraph also applies to permanent residents who have committed *outside Canada*, in the opinion of an immigration officer or peace officer, based on a balance of probabilities, an act or omission that would constitute an offence under the laws of the place where the act or omission occurred and that, if committed in Canada, would constitute an offence that may be punishable under any Act of Parliament by a maximum term of imprisonment of ten years or more.

An exception may apply to permanent residents who have satisfied the Governor in Council of their rehabilitation and that at least five years have elapsed since the expiration of any sentence imposed for the offence or since the commission of the act or omission, as the case may be.

For A27(1)(a.1) cases, follow the guidelines included in section 2.3 above for A19(1)(c.1) cases.

3.3 A27(1)(a.2)

Paragraph A27(1)(a.2) applies to permanent residents who before being granted landing, were convicted *in Canada* of an indictable offence or an offence for which the offender may be prosecuted by indictment or for which the offender is punishable on summary conviction, that may be punishable by way of indictment under any Act of Parliament by a maximum term of imprisonment of less than ten years.

For A27(1)(a.2) cases, follow the guidelines included in section 2.3 above for A19(1)(c) cases.

3.4 A27(1)(a.3)

Paragraph A27(1)(a.3) applies to permanent residents who, before being granted landing, were convicted *outside Canada* of an offence that, if committed in Canada, would constitute an offence referred to in A27(1)(a.2).

This paragraph also applies to permanent residents who, before being granted landing, have committed *outside Canada*, in the opinion of the immigration officer or peace officer, based on a balance of probabilities, an act or omission that constitutes an offence under the laws of the place where the act or omission occurred and that, if committed in Canada, would constitute an offence referred to in A27(1)(a.2).

An exception may be applicable to permanent residents who have satisfied the Minister of their rehabilitation, and that at least five years have elapsed since the expiration of any sentence imposed for the offence or since the commission of the act or omission, as the case may be.

For A27(1)(a.3) cases, follow the guidelines included in section 2.3 above for A19(1)(c.1) cases.

3.5 A27(1)(b)

Paragraph A27(1)(b) applies to permanent residents who have *knowingly* contravened any terms or conditions imposed at the time they were granted landing.

Appropriate evidence could include:

- evidence that permission to enter Canada in order to establish permanent residence was granted subject to conditions, and that these conditions were in accordance with the Regulations and that they were understood and acknowledged by the person concerned: by presentation of the original or certified copy of the landing record (form IMM 1000), or the testimony of the immigration officer who granted landing to the person concerned
- evidence that the conditions have not been complied with: admission by the person concerned, witnesses or documentary evidence or any other credible and trustworthy evidence
- evidence that the conditions had not been changed or withdrawn: admission by the person concerned, witnesses or documentary evidence or any other credible and trustworthy evidence
- evidence that the person concerned *knowingly* (for example, consciously and voluntarily) contravened the conditions imposed: examination or cross-examination of the person concerned or witnesses.

3.6 A27(1)(c)

The former paragraph A27(1)(c) is repealed in the Act, as amended. The more extensive provisions of A27(1)(a) now apply to subversive activities.

3.7 A27(1)(d)

Paragraph A27(1)(d) applies to permanent residents who have been convicted of an offence under any Act of Parliament, for which a term of imprisonment of more than six months has been imposed, or five years or more may be imposed.

For A27(1)(d) cases, follow the guidelines included in section 2.3 above for A19(1)(c) cases.

3.8 A27(1)(e)

Paragraph A27(1)(e) applies to permanent residents who have been granted landing by reason of possession of a false or improperly obtained passport, visa or other document pertaining to their admission or by reason of any fraudulent or improper means or misrepresentation of any material fact, whether exercised or made by himself or herself or by any other person.

To establish that the document is false, the evidence that you present will normally consist of reports from a forensic laboratory certifying that the document is false, and testimony from expert witnesses, if the person concerned does not admit the fact and if no documents or witnesses can establish the fact.

To establish that the document has been improperly obtained, any credible and trustworthy oral evidence (including an admission from the person concerned) or documentary evidence will be acceptable, including statutory declarations of immigration officers and visa officers. The same procedure would apply to establish that landing was granted by reason of misrepresentation of a material fact. You may also use the testimony of the immigration officer who granted landing as evidence.

Whether the person concerned or any other person exercised the improper means or misrepresentation of a material fact is immaterial. You must establish that the document or fact in question was of sufficient importance to affect the decision to admit the person.

3.9 A27(1)(f)

Paragraph A27(1)(f) applies to permanent residents who *deliberately* breach their obligation to support themselves or their dependants (their family members) in Canada.

You will generally have to establish:

- that the person concerned is reasonably able to support himself or herself and his or her dependants (family members) in Canada: by admission from the person concerned, or cross-examination of the person concerned or witnesses or documentary evidence (such as bank statements, declarations or reports from an employer, and statutory declarations of representatives from Social Services), or any other credible and trustworthy evidence
- that the dependants are family members: by producing a sponsorship form, an offer of assistance, IMM 1000, and so forth
- that this failure to support is *wilful* (for example, consciously, deliberately and voluntarily): generally, by examination or cross-examination of the person concerned.

This provision cannot be applied to permanent residents who become a burden on society (persons receiving social assistance) or who fail to support their dependants because of misfortune or events beyond their control.

3.10 A27(1)(g)

Paragraph A27(1)(g) applies to persons who are members of an inadmissible class referred to in A19(1)(j) and who have obtained landing after this paragraph came into effect on October 30, 1987.

Generally, in this type of case security reports from various police or intelligence agencies will serve as evidence, or an A40(1) certificate could be issued. For all cases of this nature, you should contact Case Management Branch, Security Review, at National Headquarters (tel. 819-994-6306).

For A27(1)(g) cases, follow the guidelines included in section 2.10 above.

3.11 A27(1)(h)

Paragraph A27(1)(h) applies to persons who became members of the inadmissible class referred to in A19(1)(j) after this paragraph came into effect on October 30, 1987.

For A27(1)(h) cases, follow the guidelines included in section 2.10 above.

4. EVIDENCE FOR A27(2) CASES

Subsection A27(2) refers to persons in Canada who are neither Canadian citizens nor permanent residents. Therefore, in all cases which proceed to inquiry under this subsection you must clearly establish this fact. The remainder of the inquiry would then be devoted to establishing the particular allegations discussed below.

4.1 A27(2)(a)

Paragraph A27(2)(a) refers to persons who are members of an inadmissible class other than those referred to in paragraphs 19(1)(h) or 19(2)(c).

Please refer to guidelines in section 2 above for explanations concerning inadmissible classes other than those referred to in paragraphs 19(1)(h) or 19(2)(c).

4.2 A27(2)(b)

Paragraph A27(2)(b) refers to person who have been employed in Canada contrary to the Act or regulations. It also applies to cases where a person engages in employment other than that indicated in the conditions imposed on him or her or with an employer other than the one authorized, or has continued to work after the expiry of the authorized period. You may refer to section 23 of the regulations for a list of conditions that may be imposed on a visitor.

The Act defines "employment" as "any activity for which a person receives or might reasonably be expected to receive valuable consideration". "Employment" is an activity which is of a nature so as to deprive another person of paid work. In determining whether the work done constitutes employment, you should consider the nature of the employment and the circumstances in which it is held [*Georgas;* Appendix A, case 26].

The definition of employment does not include all the jobs a visitor may perform for family or friends with whom he or she is living. On this issue, you have to consider whether the activity goes beyond what is reasonable for a person to do to keep busy or to compensate for the hospitality offered.

When a person refuses to make a self-incriminating statement that he or she was employed without authorization, a letter from the employer describing the employment may be filed. When such a document is unavailable, you may obtain the necessary evidence by examining witnesses familiar with the situation.

4.3 A27(2)(c)

The former paragraph A27(2)(c) is repealed in the Act, as amended.

4.4 A27(2)(d)

Paragraph A27(2)(d) refers to persons convicted of an offence under the *Criminal Code* or of an indictable offence, or of an offence for which the offender may be prosecuted by indictment or for which the offender is punishable on summary conviction under any Act of Parliament other than the *Criminal Code* or the *Immigration Act*.

For A27(2)(d) cases, follow the guidelines included in section 2.3 above for A19(1)(c) cases.

4.5 A27(2)(e)

Paragraph A27(2)(e)refers to persons who entered Canada as visitors and have remained here after losing this status.

The *Immigration Act* defines "visitor" as "a person who is lawfully in Canada, or seeks to come into Canada, for a temporary purpose, other than a person who is a Canadian citizen, a permanent resident, a person in possession of a permit, or an immigrant authorized to come into Canada pursuant to paragraph 14(2)(b), 23(1)(b) or 32(3)(b)".

Consequently, a holder of a Minister's permit is *not* a visitor. However, a person who entered Canada as a visitor, overstayed and was issued a Minister's permit which has been subsequently cancelled or which is expired, may be referred to an inquiry under A27(2)(e) [*Cembranos-Alvarez*; Appendix A, case 27].

A26(1) lists the five circumstances under which a person ceases to be a visitor:

- failure to comply with any term or condition subject to which the person is authorized to remain in Canada. You should establish that:
  - when the person concerned was granted entry, terms and conditions were imposed on the person concerned; that these conditions were in accordance with the regulations and that they were understood and accepted by the person concerned: for example, by presentation of the original or a certified true copy of the visitor's record (form IMM 1097) or testimony of the IO who granted entry
  - the conditions imposed were not respected (by admission by the person concerned, witnesses, documentary evidence or any other credible and trustworthy evidence)
  - the conditions were not modified or cancelled (by admission by the person concerned, witnesses, documentary evidence or any other credible and trustworthy evidence).
- a person, without authorization, attends any university or college, takes any academic, professional or vocational training course or engages in employment in Canada. You should introduce admission of the fact by the person concerned, or evidence in the form of a letter from an educational institution indicating that the person is (or has been) attending classes, or a letter from an employer indicating that the person is (or has been) engaged in employment, preferably specifying the dates in question. Next to an admission by the person concerned, a letter would constitute the best available evidence, if a letter can be obtained.

  You must then establish that the person does (or did) not have the proper authorization. You could question the person and, should the person concerned claim to have received the necessary authorization, you should ask him or her to produce the document or evidence of having received it. You may also introduce a document from the Director, Records Information Management at National Headquarters, indicating that a search of departmental records shows that there is no record of the person having received the authorization and specifying the dates to which the search was confined.
- the person concerned remains in Canada for a period of time greater than that for which he or she was authorized to remain here. You must establish the period of time that was authorised to the person, and if any extensions to the original time period were accorded. Where the person concerned refuses to admit that he or she has overstayed, you should introduce the original or certified true copy of the entry record. You could then present a document from the Director, Records Information Management at National Headquarters, demonstrating that there is no record of a subsequent authorization.

  In cases where there is no record of entry, *the maximum period provided under the regulations* will apply. In such cases you may wish to have read into the record any pertinent details in the passport (such as visa and entry stamps). Alternatively, you could introduce certified true copies of the relevant pages of the passport, and file them as an exhibit.
- the person entered Canada as part of or in order to join the crew of a vehicle and ceased to be or never became a member of such a crew, depending on the circumstances, within the time provided for in the conditions of entry or, failing this, within 48 hours of the grant of entry.

  Classes of persons who are crew members will be prescribed in the regulations under the authority of A114(1)(p.2).

  If the person concerned refuses to admit culpability, you must introduce the original or a certified true copy of the entry document and its conditions. If there is no such document, you will have to prove that 48 hours have elapsed since the entry was granted. You may file certified true copies of the relevant pages in the passport or seaman's logbook and have them entered in the record as exhibits.
- the person concerned was issued a departure or deportation order that has not been quashed or that is not subject to a stay of execution under A73(1). You may introduce the original or a certified true copy of the appropriate document. You should also establish that the order has not been quashed or is not subject to a stay of execution under A73(1).

4.6 A27(2)(f)

Paragraph A27(2)(f) has three parts:

- "came into Canada at any place other than a port of entry and failed to report forthwith to an immigration officer"

  In most cases of this nature, you would have to draw out the necessary evidence by questioning the person concerned. In some instances there may be witnesses who have knowledge of the event or in whom the person concerned has confided, whose evidence may add support to the Commission's case. In cases where a person claims to have entered at a certain port at a certain time, you should call the officer on duty at that time as a witness (where feasible) or, if this is not practical, ask that officer to submit a statutory declaration.

  You may wish to introduce documentary evidence about the means of transport used by the person concerned to come into Canada, to help clarify how and when the person concerned actually entered the country.

  You must clearly establish that the person concerned came into Canada at a place other than a port of entry, and did not present himself or herself immediately to an IO for examination.

- "eluded examination or inquiry under this Act"

  Through creative questioning, you should try to obtain evidence that the person concerned was compelled under the Act to report for examination or inquiry, and then establish whether or not the person has done so.

  If you use this paragraph for ship deserters, you should determine that the person concerned eluded examination. Therefore you must question the person concerned about the manner in which he or she came into Canada, to determine whether or not the person concerned avoided following the normal procedure required to be followed when a crew member comes ashore.

  The courts have held that "to elude" means that there was an element of contrivance or subreption, or the intention to refuse to honour an obligation or to escape the consequences of a law. The court held that the failure to present oneself for an examination or inquiry is sufficient proof in itself to substantiate an A27(2)(f) allegation, in the absence of evidence to the contrary [*Rios;* Appendix A, case 28]. The person concerned must naturally be given the opportunity to be heard, to respond to any such allegation.

- "escaped from lawful custody or detention under this Act"

  You should introduce evidence to establish that the person was lawfully detained under the *Immigration Act* under A23(3), A90(1), A103 or A103.1 (chapter EC 1 includes the criteria for proper and legal arrests). If the person refuses to admit that he or she was arrested under the Act, you could ask the arresting officer to appear as a witness for the Commission. Once you have established the fact of lawful arrest, you must elicit evidence that the individual did escape from detention.

4.7 A27(2)(g)

Paragraph A27(2)(g) describes persons who came into or remain in Canada with a false or improperly obtained passport, visa or other document pertaining to that person's admission, or by reason of any fraudulent or improper means or misrepresentation of any material fact, whether exercised or made by himself or herself or by any other person.

The evidence you provide in such cases will normally be in the form of documents that are alleged to be false or improperly issued, or the testimony of the person concerned establishing that the admission was obtained by any of the means mentioned in A27(2)(g). It is important to establish that the document or fact in question was relevant to the admission or to the person's ability to remain in Canada undetected.

4.8 A27(2)(h)

Paragraph A27(2)(h) describes persons who have entered Canada without having first obtained the consent of the Minister as required by A55.

For A27(2)(h) cases, follow the guidelines included above in this appendix for 2.9.

4.9 A27(2)(i)

Paragraph A27(2)(i) describes persons who have lost their citizenship under subsection 10(1) of the *Citizenship Act* by reason of subsection 10(2) of that Act.

Under subsection 10(1) of the *Citizenship Act*, a person may lose his or her Canadian citizenship if the Governor in Council is convinced, based on a report from the Minister, that the person's citizenship was acquired or reinstated, by reason of fraud, a false declaration or misrepresentation of a material fact.

Subsection 10(2) of the *Citizenship Act* stipulates that persons are deemed to have acquired their citizenship by fraud, false declarations or misrepresentation of a material fact when they acquire permanent residence in Canada by one of any of the three reasons listed above.

You can put forward the evidence required to establish the allegation by documentary evidence, statutory declarations or testimony. You should try to establish:

- that the person concerned was a Canadian citizen
- that the person concerned lost his or her Canadian citizenship
- that the loss of citizenship occurred as a result of the exigencies of subsection 10(2) of the *Citizenship Act*; that is:
  - the person was granted landed immigrant status in Canada, and
  - the landed immigrant status was obtained as a result of fraud, false declaration, or deliberate misrepresentation of a material fact.

The best evidence to support the allegation would be a letter from the Registrar of Canadian Citizenship outlining why, how and when the person concerned lost his or her citizenship. The testimony of the person concerned confirming the allegations would naturally also serve as excellent evidence.

4.10 A27(2)(j)

The former paragraph A27(2)(j) is repealed in the Act, as amended.

4.11 A27(2)(k)

Paragraph A27(2)(k) refers to persons who have been granted entry to Canada under A14(2)(b), A23(1)(b) or A32(3)(b), but who failed to appear for further examination within the time and at the place set.

You must demonstrate, generally through documentary evidence, that the person concerned was to appear within a particular time and at a particular place for further examination. You must also establish – either through the testimony of the officer who was to have conducted the further examination or by statutory declaration – that the person never presented himself or herself.

4.12 A27(2)(l)

Paragraph A27(2)(l) describes persons who *deliberately* fail to support their dependent family members in Canada.

You should try to establish:

- that the person concerned was in a position to support the dependent family members
- that the persons involved are indeed family members within the definition of family included in the regulations
- that the person concerned *deliberately* failed to support the dependent family members. It is important for you to establish the element of deliberateness.

APPENDIX E

CRIMINAL EQUIVALENCE AND PARDONS

1. CRIMINAL EQUIVALENCES

The documentary evidence in your case may involve your examining details of a conviction obtained abroad to establish its equivalence to Canadian law. The Federal Court has prescribed methods for determining equivalence in three leading cases, discussed in the following sections.

1.1 *Brannson*

The adjudicator ordered Mr. Brannson's removal because he was a person described in A27(2)(a) in that, if he were applying for entry to Canada, he would not have been granted entry by reason of his being a member of an inadmissible class of persons described in A19(2)(a). In *Brannson* [Appendix A, case 5], the court set the deportation order aside and referred the matter back to an adjudicator for the resumption of the inquiry.

Mr. Brannson was reported for having been convicted in the United States of mail fraud. The adjudicator found that the offence of which he was convicted, as revealed by the terms of the judgement and the probation commitment order, would have been an offence under s. 339 of the *Criminal Code* had it been committed in Canada. The court disagreed with the adjudicator's finding because the Canadian offence relates to mailing letters and circulars, whereas the U.S. offence is broader and refers to mailing any matter or thing. In other words, someone could not be convicted of the Canadian offence in question if the materials transmitted or delivered were neither letters or circulars. No evidence was introduced at the inquiry as to what Mr. Brannson had mailed, although he did provide some information as to the circumstances of the offence.

The court decided that these documents should have been introduced in evidence:

- evidence of conviction (this may take the form of a certificate of conviction, a police report, or a report of a telephone conversation with the police or a court reporter)
- the legal description of the foreign offence (the text of the statutory provision under which the person was convicted), and
- evidence of the particulars of the offence, such as the charge, indictment, or similar document. In some cases, the certificate of conviction may contain sufficient information for the certificate to be used instead of the indictment.

The court laid out the following process:

- You should examine the certificate of conviction or a similar document to determine the offence for which the person was convicted. A certificate of conviction is particularly important if the person concerned was charged with one offence and convicted of another. This will usually occur where a person is charged with a serious offence but, as a result of plea bargaining, is convicted of a lesser offence. The offence that you must look at is the one of which the person concerned was actually convicted. In this case, the certificate of conviction showed that Mr. Brannson was convicted of an offence under 18 U.S.C. 1341.
- You should study the provisions describing the foreign offence to determine its essential elements. Merely looking at the name of the offence is not sufficient.
- Having determined the elements of the foreign offence, you should examine the relevant provisions in our legislation to see whether there is an equivalent offence. The essential elements of each offence must be compared to determine that they correspond. Although the elements of the foreign and Canadian offences need not be strictly identical, the elements of the Canadian offence have to be such as to include within them the elements of the foreign offence. If, for example, a foreign offence were narrower than a Canadian offence, the wider Canadian offence would, nonetheless, be equivalent to the foreign offence. The court realized that there will be differences in the wording of statutory provisions in different countries and, in seeking to determine the Canadian equivalent, you must bear in mind that the language of the two provisions need not be the same.
- If the foreign offence is broader than the Canadian offence, you must examine the indictment or a similar document to determine whether the particulars of the offence fall within the Canadian offence. If the particulars narrow the offence committed in such a manner as to bring it within the legal

definition of the Canadian offence in question, then there is an equivalence. If the circumstances are such that the foreign offence committed falls outside the legal description of the Canadian offence one is looking at, the two sections should not be equivalent. One should then look elsewhere to see if there is an equivalent.

In the *Brannson* case, the sequence should have been:

- determine that the foreign offence included mailing any matter, whereas the Canadian one referred to the mailing of letters and circulars only
- see if what was mailed fell within the Canadian offence, and
- if the material mailed was a letter, then there would be an equivalency.

The court mentioned two possible exceptions to the requirement of producing evidence of relevant foreign law, conviction and charge:

- where the conviction is with respect to an offence that is *malum in se* (that is, an offence against moral law which is of such a character as to be an offence in all countries, such as murder or theft). In such cases, you would presume the law in the foreign country to be the same as in Canada. However, you should rely on this exception only in the clearest of cases. For example, manslaughter appears to be a *malum in se* offence, but in some American jurisdictions manslaughter has little resemblance to manslaughter as we understand it in Canada. A well-informed counsel could therefore catch you off guard.
- in non-common law countries, the methods whereby prosecutions are instituted may be substantially different from those generally prevailing in common law countries. Therefore, where the foreign conviction was in a non-common law jurisdiction, there might not be any document equivalent to an indictment. If such documents are not available, you should introduce evidence to that effect. If the case is then appealed to the Federal Court, the court will understand why the Commission relied on the testimony of the person concerned. It is important to establish the fact of unavailability, since the testimony of the person concerned could be somewhat less reliable than the documents in issue. The same would apply to the unavailability of police records and similar documents, for whatever reason.

1.2 *Anderson*

Mr. Anderson was reported on the grounds that he was a person described in A27(2)(a), in that if he were applying for entry, he would not be granted entry by reason of his being a member of an inadmissible class described in A19(1)(c). The adjudicator, drawing a Canadian equivalent different from that alleged in the direction, found the person to be described in A27(2)(a) and A19(2)(a) and issued a departure notice. In other words, he found Mr. Anderson to be a member of an inadmissible class other than the inadmissible class specified in the A27 report and based his departure notice on that finding.

In *Anderson* [Appendix A, case 7] the court held that there can be no switching between the criminality provisions of A19 where the report alleges that the person is described in A27(2)(a). A person can only be found described on the basis of a ground contained in the report. In addition, the court found that the adjudicator was unable to determine the essential elements of the foreign offence on the basis of the information presented at the inquiry. It was, therefore, impossible for him to determine that the foreign offence would have been an offence punishable by way of indictment under the *Criminal Code*.

As a result of this decision, it is the Commission's position that:

- reports should refer to as many possible Canadian equivalents as are reasonably necessary, and
- if there is any doubt as to the possible Canadian equivalent, both A19(1)(c) and A19(2)(a) should be mentioned with A27(2)(a) in your report.

1.3 *Dayan*

Mr. Dayan was reported on the grounds that he was a person described in A27(2)(a), in that if he were applying for entry, he would not be granted entry by reason of his being a member of an inadmissible class described in A19(1)(c). After a review of the facts of the case the adjudicator ordered the subject deported.

The case was subsequently appealed to the Federal Court [Dayan; Appendix A, case 6]. Counsel for the appellant argued that the proper Canadian equivalent of the offence committed by his client had not been established at the inquiry. While the court supported the adjudicator, it took the opportunity to outline measures that will help to equate foreign offences with Canadian ones.

The court indicated that you should make every effort to obtain the text of the statutory provisions of the foreign law when attempting to establish the Canadian equivalent. You should introduce this text at the inquiry so that it will form part of the official record. The court recognized that not all nations codify their laws in a text of statutes similar to our own. The absence of a specific equivalent provision in the statute law of another country, when this is the case, should be reflected in the record of the inquiry.

1.4 Implications

Brannson, *Anderson* and *Dayan* affect inland inquiries in particular. You must bear in mind that to be successful at an inquiry involving a foreign conviction:

- you must obtain evidence of the conviction of the person concerned, the legal description of the foreign offence and particulars of the offence as usually evidenced by the charge or indictment in order to establish the Canadian equivalent of the foreign offence. These should all be introduced as exhibits at the inquiry, whether or not you think they are necessary in the particular case. If questions then arise as to the proper equivalent, any doubt will be resolved more effectively.
- depending on the facts of the case, it may be necessary for reports to be more general, considering:
  - the difficulty in determining a Canadian equivalent offence, and
  - the fact that the criminal equivalence determined at inquiry must fall within the allegation contained in the report.

Section 3 below gives a full list of leading cases dealing with criminal equivalence.

2. PARDONS AND REHABILITATION

2.1 Pardons for convictions in Canada

Persons who have obtained criminal convictions in Canada can no longer apply for rehabilitation. Rather, to overcome inadmissibility, they are to apply to the National Parole Board for a pardon. Section 3 of the *Criminal Records Act* provides that a person who has been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament may apply to the National Parole Board for a pardon of that offence.

Before an application for a pardon may be considered, the following period must have elapsed after the expiration according to law of any sentence, including a sentence of imprisonment, a period of probation and the payment of any fine, imposed for an offence:

- five years, in the case of an offence prosecuted by indictment, or a service offence within the meaning of the *National Defence Act* [*Criminal Records Act*, subsection 4(a)]
- three years, in the case of an offence punishable on summary conviction, or a service offence within the meaning of the *National Defence Act*, other than a service offence referred to in paragraph 4(a)(ii) of the *Criminal Records Act*.

For an offence prosecuted by indictment, the National Parole Board may grant a pardon if it is satisfied that the applicant, during the period of five years, has been of good conduct and has not been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament.

For an offence punishable on summary conviction, a pardon shall be issued if the offender has not been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament during the period of three years.

Under section 5 of the *Criminal Records Act*, a pardon:

> is evidence of the fact that the Board, after making proper inquiries, was satisfied that the applicant for the pardon was of good behaviour and that the conviction in respect of which the pardon is granted or issued should no longer reflect adversely on the applicant's character; and, unless the pardon is subsequently revoked or ceases to have effect, vacates the conviction in respect of which it is granted and, without restricting the generality of the foregoing, removes any disqualification to which the person so convicted is, by reason of the conviction, subject by virtue of the provisions of any Act of Parliament, or a regulation made thereunder.

Pardon application kits or additional information can be obtained from:

Clemency and Pardon Division
National Parole Board
340 Laurier Avenue West
Ottawa, Ontario
K1A 0R1
Tel.: 613-954-2033

2.2 Pardons for convictions outside Canada

The granting of a pardon in another country does not necessarily render the person concerned admissible to Canada. You must take several factors into consideration before reaching a conclusion as to whether a person who has been granted a pardon is admissible or not. The Commission holds the position that if a pardon recognizes that the person should not have been convicted (that is, the person was convicted in error), effect will be given to the pardon. However, if the pardon was granted for rehabilitation purposes, then the Commission will not necessarily give effect to it.

In 1991, the Federal Court of Appeal stated in *Burgon* that we should accept pardons that are granted in courts where the laws and legal system allowing the pardon are substantively similar in purpose, process and result to ours, unless we have serious cause not to do so [*Burgon;* Appendix A, case 8]. Although countries that have legal systems based on common law generally would be considered similar to ours, you must examine the circumstances of each case carefully.

In *Burgon*, the court considered whether Ms. Burgon was refused an immigrant visa to Canada under A19(1)(c) because of having pleaded guilty on a charge of conspiring to supply controlled substances, for which she was sentenced to two years' probation, or whether she is saved from the operation of A19(1)(c) by s. 13(1) of the United Kingdom's *Powers of Criminal Courts Act, 1973*, which stipulates:

> A conviction of an offence for which an order is made under this Part of this Act placing the offender on probation discharging him absolutely or conditionally shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the preceding provisions of this Act....

Policy relating to criminal records has changed in recent years to reflect altering social attitudes towards those persons who have acquired criminal convictions. The *Canadian Criminal Records Act* invoked in 1979 allows criminal records to be pardoned or erased in certain circumstances.

Similar provisions to assist those persons with criminal records in making a new start in life were enacted in the U.K. and other countries. In fact, the British allow offenders placed on probation to be deemed not to have a conviction. The *U.K. Rehabilitation of Offenders Act*, 1974 treats a probation order as a conviction for which a person may become rehabilitated and thus, the conviction to be considered a spent conviction. It was this provision that enabled Ms. Burgon to have her conviction expunged in the U.K. This legislation while not identical to that of Canada, is similar in content and effect.

The court ruled in *Burgon* that "we should recognize the laws of other countries which are based on similar foundations to ours, unless there is a solid rationale for departing therefrom". Thus a person who has become rehabilitated and whose conviction is spent under the U.K *Rehabilitation of Offenders Act, 1974* is generally not to be considered to have been convicted of an offence for the purposes of the administration of the *Immigration Act*, unless there is some valid basis for deciding otherwise.

Legal Services suggest that you apply the following steps as a general approach to persons who have been granted foreign pardons:

- Determine whether the person is *prima facie* inadmissible under either A19(1)(c.1) or A19(2)(a.1)(i).
- Decide whether the foreign country's legal system is based on similar foundations and shares similar values with Canada.
- Determine whether the person concerned falls within the exception by satisfying either the Governor in Council or the Minister, as the case may be, that they have rehabilitated themselves.
- For countries with legislation similar to Canada's, examine the foreign legislation to determine whether the pardon recognizes that the conviction will be said never to have happened (and has effectively been expunged) or whether the pardon recognizes that rehabilitation has taken place. Where it is merely a matter of rehabilitation, the person concerned is inadmissible under the *Immigration Act.*

For cases of this nature, you should contact the Inquiries Section, Case Presentation and Litigation at National Headquarters (tel.: 819-953-3747).

3. CASE LAW ON CRIMINAL EQUIVALENCIES

3.1 Adjudicator's jurisdiction

Kalacharan [Appendix A, case 29]

The Federal Court of Appeal granted a conditional discharge, which means a conviction is deemed never to have been registered. Thus the basis for making a deportation order under A27(2)(d) was deemed not to have existed.

Anderson [Appendix A, case 7]

To determine which Canadian offence is equivalent to the U.S. conviction, the adjudicator needs the precise wording of the U.S. offence so that the adjudicator can compare the essential elements of the offence. An order which is not based on proper evidence will be set aside.

Wilson [Appendix A, case 30]

The court outlined which sections of the *Criminal Code* relating to N.S.F. cheques fall under Al9(1)(c). The court determined that the equivalent of the offence did not fall under A19(1)(c).

Clarke [Appendix A, case 31]

The court indicated that the adjudicator is not bound to consider only the Canadian equivalent given in the report. The adjudicator may consider other Canadian equivalents if the appropriate equivalent leads to the person concerned being described in the paragraph of the *Immigration Act* cited in the report.

Steward No. 3 [Appendix A, case 32]

The court outlined three ways in which to determine equivalency.

Mohammad No. 1 [Appendix A, case 33]

The fact that the Governor in Council has not considered rehabilitation does not affect the adjudicator's jurisdiction. A27(1) requires that the immigration officer possess information that the person concerned is described in Al9(1)(c), and to know that the person concerned has not satisfied the Governor in Council as to his or her rehabilitation.

Mohammad No. 3 [Appendix A, case 34]

The officer need not wait for a decision by the Governor in Council on rehabilitation before writing the report.

3.2 Evidence required to prove equivalency

Brannson [Appendix A, case 5]

The court ruled that when the person concerned has been undoubtedly convicted, the validity of the conviction on the merits cannot be put in issue at inquiry. See also section 1.1 above.

Dayan [Appendix A, case 6]

The court noted that no evidence of the foreign statute was adduced at inquiry. The court outlined three ways in which equivalency may be determined. In this case, the actual facts which led to the convictions gave the adjudicator adequate evidence to support a finding under Al9(1)(c). The court stated that proof of the foreign statute should have been made. Application of the concept of offences as *malum in se* to prove equivalency should only take place when proof of foreign law cannot be made and only when the foreign law is that of a non-common law country. See also section 1.3 above.

Anderson [Appendix A, case 7]

The court gave guidance on how to establish Canadian equivalents to foreign convictions. See also section 1.2 above.

Hill [Appendix A, case 35]

The court set aside a deportation order because essential evidence was not produced. This decision outlines a three-point method for establishing whether there is sufficient evidence to determine equivalency.

Mak [Appendix A, case 36]

The court upheld the adjudicator's decision that the applicant had been convicted of an offence which, if committed in Canada would have been the offence of attempted robbery prescribed by the *Criminal Code*. The circumstances leading to the conviction were introduced by testimonial evidence only.

Steward No. 3 [Appendix A, case 32]

The court reiterated the test to be conducted in order to establish equivalency. In this case, the foreign offence is broader than the Canadian offence. The court determined that equivalency had not been established.

3.3 Other case law

Robertson [Appendix A, case 37]

A19(1)(c) can only be used to deport a person when that person has been convicted of an offence for which the maximum punishment is ten years' imprisonment at the date of the deportation order.

Davis [Appendix A, case 38]

This decision outlines the relevance of taking into account the currency exchange rate to establish equivalency in the case of foreign conviction involving theft.

Arnow [Appendix A, case 39]

This case involves a conviction in absentia. The court stated that "a conviction is a conviction".

Kai Lee [Appendix A, case 40]

A person prosecuted and convicted in Canada by way of summary conviction is, for the purposes of the *Immigration Act*, convicted of a summary offence despite the fact that the offence could have proceeded by indictment.

Potter [Appendix A, case 41]

A person prosecuted and convicted abroad of a hybrid offence shall be deemed to have been convicted by indictment.

4. EXAMPLES OF DETERMINING EQUIVALENCE

4.1 United States *Internal Revenue Code*

Paragraph 7208(1) of 26 USC 1976 (the *Internal Revenue Code* of the United States) provides that "any person" who

> willfully makes and subscribes any return, statement, or other document which contains or is verified by a written declaration that is made under the penalties of perjury, and which he does not believe to be true and correct as to any material matter...
>
> shall be guilty of a felony...

A corresponding Canadian provision might be paragraph 239(1)(a) of the *Income Tax Act*, which stipulates that

> every person who has
>
> > (a) made, or participated in, assented to or acquiesced in the making of, false or deceptive statements in a return, certificate, statement or answer filed or made as required by or under this Act or a regulation...
>
> is guilty of an offence...

You could analyze the elements of these two provisions for equivalence as follows:

Foreign provision	Canadian provision	Comments
any person who	every person who	Equivalent element
willfully makes and subscribes	made, or participated in, assented to or acquiesced in the making	The foreign offence states the element of intent ("wilfully"). While the Canadian offence does not specifically refer to intent, it would be argued that intention is clearly a required element of the Canadian offence. While the U.S. provision refers to making a return, the Canadian statute refers to making a *statement* in a return. It would be argued that both statutes attempt to control the making of false statements in returns, and while the language of the statutes may differ, their intent and operation are the same.
makes... any return	return... filed or made	Equivalent element
which contains or is verified	as required by or under this Act or a regulation	The Canadian offence may be wider in that it does not require the return to be verified by a written declaration made under penalties of perjury. The point is arguable, in that the Canadian statute contemplates that the return will be filed "as required by or under this Act or a regulation." Research of the Canadian statute may or may not reveal a Canadian compliance method equivalent to that contained in the U.S. statute. The argument here could be, first, that the two elements are equivalent on their face; second, that the adjudicator should find that the "narrower" U.S. element is included in the more broadly defined Canadian element and is therefore equivalent; and third, that if it is found that there is no equivalency on this element, it is irrelevant to the adjudicator's decision because the difference between the two elements is one of form, not of substance, and in any event, the element is not essential to the offence.

Foreign provision	Canadian provision	Comments
and which he does not believe	in the making of false or deceptive statements...	The Canadian offence, it might be argued, is more broadly defined than the U.S. offence, in that it contemplates the making of merely deceptive statements (which may well be true), as well as false statements. The U.S. statute refers to statements not believed to be true and correct. One could argue that these elements are equivalent and that in any event, the element of the narrower American offence is included within the more broadly defined Canadian offence.
by a written declaration that is made under the penalties of perjury... to be true and correct as to any material matter.		The U.S. statute refers to "any material matter," implying, perhaps, that untrue and incorrect statements might be permissible in a return if they were immaterial. Fortunately the Canadian statute, by omitting to include the concept of materiality, forces us to address the totality of the return as to false or deceptive statements, not just "material" matters. This, it could be argued, is a more broadly defined approach than that taken in the U.S. statute, and therefore the element of the U.S. statute is included in the Canadian element.

On the basis of this analysis, or similar arguments, you would submit to an adjudicator that the statute provisions are equivalent.

4.2 Hong Kong *Prevention of Bribery Ordinance*

Paragraph 9(1)(b) of the Hong Kong *Prevention of Bribery Ordinance* provides that:

> any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his...
>
> (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,
>
> shall be guilty of an offence

A corresponding Canadian provision might be s. 426(1) of the *Criminal Code*:

> Every one commits an offence who
>
> (a) corruptly...
>
> (ii) being an agent, demands, accepts or offers or agrees to accept from any person,
>
> a reward, advantage or benefit of any kind as consideration for doing or forbearing to do, or for having done or forborne to do, any act relating to the affairs or business of his principal or for showing or forbearing to show favour or disfavour to any person with relation to the affairs or business of his principal...

You could analyze the elements of these two provisions for equivalence as follows:

Foreign Provision	Canadian Provision	Comments
Any agent who	agent	Apparently equivalent
without lawful authority or reasonable excuse	corruptly	Apparently equivalent
solicits or accepts	demands, accepts, offers to or agrees to accept	Apparently equivalent
any advantage	reward, advantage or benefit of any kind	Apparently equivalent
as an inducement to or reward for or otherwise...	as consideration	Apparently equivalent
showing... favour... to any person	showing... favour to any person	Apparently equivalent
in relation to his principal's affairs or business	with relation to the affairs or business of his principal.	Apparently equivalent

It is certainly arguable that these two offences are equivalent. They seem to contain the same essential elements and would appear to have been enacted to achieve the same quality and degree of social regulation.

4.3 South Africa *Road Traffic Ordinance*

Subsection 135(1) of the South Africa *Road Traffic Ordinance* provides that:

> The driver of a vehicle on a public road at the time when such vehicle is involved in or contributes to any accident in which any other person is killed or injured or suffers damage in respect of any property or animal...
>
> (a) shall immediately stop the vehicle;
>
> (b) shall ascertain the nature and extent of any damage sustained.

Section 252 of the *Criminal Code* stipulates that:

(1) Every one who has the care, charge or control of a vehicle, vessel or aircraft that is involved in an accident with

(a) another person,

(b) a vehicle, vessel or aircraft, or

(c) in the case of a vehicle, cattle in the charge of a person,

and with intent to escape civil or criminal liability, fails to stop his vehicle, vessel, or, where possible, his aircraft, give his name and address and, where any person has been injured or appears to require assistance, offer assistance, is guilty...

(2) In proceedings under subsection (1), evidence that an accused failed to stop his vehicle, vessel, or where possible, his aircraft, as the case may be, offer assistance where any person has been injured or appears to require assistance, and give his name and address, is, in the absence of evidence to the contrary, proof of an intent to escape civil or criminal liability.

You could analyze the elements of these two provisions for equivalence as follows:

Foreign Provision	Canadian Provision	Comments
The driver of a vehicle on a public road	Everyone who has the care, charge or control of a vehicle	The Canadian element is more broadly defined. The argument could be made that a "driver" in the South African provision would be included in "Everyone who has the care, charge or control" in the Canadian provision. Note that the element of the Canadian offence does not require that the offence take place on a public road.
at the time when such vehicle is involved in or contributes to any accident	that is involved in an accident	These elements would appear to be equivalent.
in which any other person... suffers damage in respect of any property...		Note the manner in which "damage" is treated in the South African provision, which includes a penalty for failure to stop to ascertain damage. The Canadian offence provides a penalty for failure to stop with *intent* to escape civil or criminal liability.
shall immediately stop the vehicle	fails to stop his vehicle...	These elements are arguably equivalent although phrased differently.
	with intent to escape civil or criminal liability	Intention to escape civil or criminal liability is not an element of the South African offence. The onus in the South African offence is to stop to ascertain the nature and extent of damage.

It could be argued in this situation that the essential element of the Canadian provision - that is, the intention to escape civil or criminal liability - is not contained in the South African offence, which focuses on the obligation to stop to ascertain the nature and extent of any damage sustained. Thus, although the offences are similar in nature, they may not be found to be equivalent by the adjudicator.

APPENDIX F

ADJOURNMENTS

An adjudicator has the power to grant adjournments and is responsible for controlling the inquiry process. In some situations prescribed by the Act, the adjudicator is required to grant adjournments. The adjudicator generally has the discretion to accept or refuse other adjournment requests, subject to the duty to ensure a full and proper inquiry. The adjudicator must exercise the discretion to grant an adjournment in accordance with the principles of fairness and natural justice [*Prassad;* Appendix A, case 9].

The principles of natural justice or fairness require that the adjudicator consider an adjournment request by hearing submissions from both the person concerned (or that person's counsel) and the Minister's representative. Then the adjudicator must make a decision which balances the interests of the parties involved, the taxpayer and society as a whole to hold a fair hearing in as efficient and expeditious a manner as possible.

It is not sufficient for you as the Minister's representative simply to object to the request for adjournment. In your arguments to the adjudicator, you are responsible for demonstrating the reasons why the request should or should not be granted by referring to the appropriate case law and by submitting valid reasons for the objection.

1. FACTORS IN AN ADJOURNMENT REQUEST

In *Prassad* [Appendix A, case 9] the Supreme Court noted the factors which should be considered when entertaining a request for adjournment:

- sympathy for the circumstances in which the person concerned finds himself or herself;
- the number of adjournments granted previously;
- the length of time for which an adjournment is requested; and
- the timeliness of pursuing other remedies before asking for an adjournment (for example, if an application under A114(2) is outstanding, the adjudicator may review the opportunity which was available to the person concerned to pursue such an application before the request for adjournment).

CPO submissions on an adjournment should address all the factors listed above.

2. MANDATORY ADJOURNMENTS

The adjudicator must grant a request for adjournment under four specific circumstances:

- to enable a minor or a person unable to understand the nature of the proceedings to be represented by a parent or a guardian, or if the adjudicator is of the opinion that the person is not properly represented by a parent or guardian, to designate some other person at the expense of the Minister [A29(4); A29(5)]
- where the services of an interpreter are required, to permit the presence of an interpreter at the inquiry [*Adjudication Division Rules,* rule 11(1)]
- when the person concerned claims Canadian citizenship, and had it not been for such claim, a removal order would have been made [A41(1)], and
- when you have informed the adjudicator that you will request that a dependent family member of the person concerned be included in an order issued against that person, and the adjudicator is not convinced that the dependant of the subject of the inquiry has been properly notified of the allegation and his or her rights [A33(2)].

3. DISCRETIONARY ADJOURNMENTS

Except for the four circumstances just noted above, all other adjournments of inquiries are granted at the adjudicator's discretion, or under the general powers conferred on the adjudicator as a commissioner appointed under Part I of the *Inquiries Act*. Both parties may make arguments about the need for an adjournment. An adjudicator may grant an adjournment, among other grounds:

- to enable the person concerned to retain counsel [A30]
- to obtain additional evidence or to summon witnesses

- to allow relevant documents to be introduced (such as evidence of a conviction outside Canada)
- to have the person concerned medically examined or to secure additional medical evidence
- to consult with the Registrar of Canadian Citizenship
- to enable a person to apply for a Minister's permit;
- to replace an incompetent interpreter or counsel
- to determine eligibility of a claim to refugee status
- to determine a claim to Canadian citizenship
- to allow time to study evidence before making a submission
- to allow the preparation of arguments, and
- to allow an adjudicator to prepare the decision.

4. ADJOURNMENTS TO OBTAIN COUNSEL

Over the years it has often been argued before the courts that refusal to grant an adjournment for the purpose of obtaining counsel of choice was tantamount to depriving a person of the right to retain and instruct counsel. In reply to such an argument you may refer to the decisions in cases 10, 11 and 12 in Appendix A. You can argue that the right to counsel simply means that the person concerned must be given the opportunity to retain and instruct counsel of choice amongst those who are ready and available to proceed on the date fixed by the adjudicator.

The person concerned must be given sufficient time to find counsel. However, you must object to long adjournments when you feel that the subject of the inquiry has had a reasonable opportunity to obtain counsel who is willing and able to handle the case. In such cases, you will argue that the person should take the necessary action to find other counsel. If counsel is never available or doesn't appear when required, you should request that a peremptory resumption date be set.

You should argue that the *Charter* does not grant an unrestricted right to counsel of choice. Clients have the right to be represented by counsel, but by counsel who is reasonably available to appear before the tribunal. Counsel are also obliged by their code of ethics not to take on cases where they are not reasonably available to appear on behalf of their clients because of previous commitments.

Counsel who abuse the system by making repeated unjustified requests for adjournment or using other delaying tactics should be reported to the office manager, so that a formal complaint can be made to the provincial bar association or law society. The Case Presentation and Litigation Section at National Headquarters should be informed of such formal complaints.

5. ADJOURNMENTS TO SEEK A MINISTER'S PERMIT

The person concerned or that person's counsel may request an adjournment to seek a Minister's permit. You should oppose such adjournment requests unless you are satisfied that the person concerned deserves such a permit, or you have received notification that the Minister wishes to review the case. It is important to remember that the power to issue a permit is delegated to the official who signed the direction to hold an inquiry. Before signing this direction, that official reviews the case to determine whether extenuating circumstances exist that may justify issuing a permit. Thus in assessing whether in your opinion the person deserves a Minister's permit, you should review the case file carefully to see whether any previous reviews have been conducted.

The courts have made several decisions on the issue:

- In *Louhisdon* [Appendix A, case 13], the Federal Court of Appeal held that the *Immigration Act*, 1952 "simply gives the Minister the power to grant a permit; it does not create any right in favour of those who might benefit from the exercise of this power. It is true that making the deportation order had the effect of depriving the person concerned of the option of obtaining a permit from the Minister. This does not, however, give the person concerned grounds for complaint; the deportation order has this effect under the Act regardless of when it is made. In my view, the decision of the Supreme Court in *Ramawad* cannot help the applicant."

- In *Murray* [Appendix A, case 14], the Federal Court of Appeal held that the adjudicator did not err in refusing to adjourn an inquiry to enable the applicant to apply for a Minister's permit. The judge distinguished the *Ramawad* decision by stating in his reasons:

  > "I find nothing in the decision of the Supreme Court of Canada that lays it down that, whenever a person, being in Canada, is the subject of deportation proceedings, the presiding officer must interrupt the inquiry proceedings to permit him to apply for a Minister's Permit if he has not already done so. Such a rule of law would, in my view, create such a fundamental and disruptive change in the processing of these matters that I am not prepared to infer it in the absence of an express statutory provision or a clear pronouncement in a decision that I feel bound to follow."

- In *Nelson* [Appendix A, case 15], the Federal Court Trial Division dismissed an application for a stay to prevent the adjudicator from continuing the inquiry, in order to await a decision on the application for a Minister's permit made by the person concerned.

- In *Widmont* [Appendix A, case 16], the Federal Court of Appeal noted that the *Immigration Act* did not contain any express provision concerning the adjournment of an inquiry to enable the Minister to render a decision on a request for a permit under A37(1). The court noted that according to the prevailing opinion, the fact that the Minister contemplated the possibility of issuing a permit under A37(1) did not prevent the holding of an inquiry. Earlier decisions had considered the issue raised in the case and the court accordingly had to follow them.

- In *Smart* [Appendix A, case 17], the Federal Court of Appeal recognized that an adjudicator has jurisdiction to proceed with an inquiry even if there is an outstanding request for a Minister's permit.

- In *Prassad* [Appendix A, case 9], the Supreme Court upheld the adjudicator's refusal to adjourn, because the person concerned had from June 6, 1984 until November 21, 1984, the date when the inquiry was scheduled to proceed, to make the application, but a letter was not sent to the Minister's office until November 16, 1984. The judge notes in his reasons:

  > "The logic of the appellant's submission would thus require that the adjudicator adjourn the inquiry whenever the result of that inquiry has the potential to inhibit the subject of that inquiry from pursuing an alternative remedy. This would amount to reading into the legislation an automatic stay.... It is untenable to hinder the adjudication process under the *Immigration Act, 1976* by laying down such an inflexible rule for the conduct of an inquiry."

6. ADJOURNMENTS FOR HUMANITARIAN CONSIDERATIONS

The person concerned or that person's counsel may request an adjournment to examine humanitarian considerations [Appendix A, cases 18, 19, 20, 21, 22]:

- In *Green* [Appendix A, case 19], the Federal Court of Appeal noted that the *Jiminez-Perez* case [Appendix A, case 18] did not require that the adjudicator who receives an application pursuant to subsection 115(2) [now A114(2)] during an inquiry must adjourn the inquiry immediately until the Governor in Council renders a decision on the application. The adjudicator is required to proceed with the inquiry as expeditiously as is possible under the circumstances of each individual case. Likewise the power of the adjudicator to adjourn an inquiry is restricted to adjournments "for the purpose of ensuring a full and proper inquiry."

- In *Koutsouveli* [Appendix A, case 21], the Federal Court, Trial Division, noted that an application for an exemption submitted under subsection A115(2) [now A114(2)] in no way permits the inquiry under section 27 to be stayed.

- In *Chhokar* [Appendix A, case 22], the Federal Court, Trial Division, noted an interesting excerpt from the *Green* decision [Appendix A, case 19]: "On the facts of this case, if the person concerned's position were to prevail, the result would be that in every inquiry under the *Immigration Act*, the proceedings could be stopped for a considerable length of time pending a decision by the Governor in Council, by the simple expedient of making a Section A115(2) [now A114(2)] application during the course of the inquiry. In my view, such a result would disrupt and paralyze the conduct of inquiries under the *Act*." Nevertheless, in *Green* the court did state that where an inquiry had been adjourned for the purpose of allowing an application under A115(2) [now A114(2)], the adjudicator should await the response of the Governor in Council.

7. ADJOURNMENTS FOR ADDITIONAL EVIDENCE OR ARGUMENTS

You or counsel for the person concerned may request an adjournment to obtain additional evidence, or to prepare a legal or constitutional argument or submission.

Under section 57 of the *Federal Court Act*, clients or their counsel must give the attorneys general of Canada and each of the ten provinces ten days' notice of their intention to raise a constitutional question.

8. ADJOURNMENTS FOR A CHANGE OF VENUE

The adjudicator may grant an adjournment to allow for a change of venue, if the adjudicator decides that such a change is necessary for holding a full and proper inquiry. The adjudicator will hear from both parties before making a decision. Sections 5.12 and 6.11 of chapter EC 2 outline the procedures to follow. For further information see the *Adjudication Division Rules*, rules 7(1) and 7(2).

APPENDIX G

REMOVAL ORDERS

1. GENERAL

Subsection A31(1) prescribes that an adjudicator must give his or her decision as soon as possible after an inquiry has been completed. The adjudicator must inform the person of the basis on which the removal order or the conditional removal order was made. [A31(2)]

2. REMOVAL OF PERSONS SEEKING ADMISSION TO CANADA

A person found to be a member of an inadmissible class described in A19 is subject to a removal order.

If the person concerned is not making a refugee claim, or a refugee claim is not eligible, two types of removal orders may be made when an adjudicator concludes that the person concerned is a member of an inadmissible class: a deportation order or an exclusion order. The determination of one removal order or the other is dictated by the provisions of the Act, and the adjudicator has no discretion on this aspect.

- A *deportation order* is made when the adjudicator concludes that the person is a member of the inadmissible class described in A19(1)(c), A19(1)(c.1), A19(1)(c.2), A19(1)(d), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k), A19(1)(l), A19(2)(a), A19(2)(a.1) or A19(2)(b).
- An *exclusion order* is made when the adjudicator concludes that the person is a member of an inadmissible class other than those just mentioned above.

If an adjudicator concludes that a refugee claimant is described in an inadmissible class, and where the refugee claim has been determined eligible, two types of removal orders may be made: a conditional deportation order or a conditional departure order. When the eligibility of a refugee claim remains to be determined by the SIO, an adjudicator will make a conditional removal order.

- A *conditional deportation order* is made when the adjudicator concludes that the person is a member of the inadmissible class described in A19(1)(c), A19(1)(c.1), A19(1)(c.2), A19(1)(d), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k), A19(1)(l), A19(2)(a), A19(2)(a.1) or A19(2)(b).
- A *conditional departure order* will be made when an adjudicator concludes that the refugee claimant is a member of an inadmissible class other than those just mentioned above.

3. REMOVAL OF PERMANENT RESIDENTS DESCRIBED IN A27(1)

If an adjudicator concludes that a permanent resident is described in one of the situations prescribed in A27(1) (except paragraph A27(1)(b)), the adjudicator has no choice but to make a *deportation order*. Where a permanent resident is described in paragraph A27(1)(b), the adjudicator may make a *departure order* against the permanent resident if the adjudicator is satisfied that the person should be allowed to return to Canada without the written consent of the Minister, and that the person will leave Canada within the applicable 30-day period specified in the regulations for the purposes of A32.02(1).

In the case of a permanent resident – other than a permanent resident described in paragraph A27(1)(b) – who claims refugee status, and where the refugee claim has been determined eligible by an SIO or where eligibility remains to be determined, the adjudicator will make a *conditional deportation order*. Where the permanent resident is described in paragraph A27(1)(b), the adjudicator may make a *conditional departure order* against the person if the adjudicator is satisfied that the person should be allowed to return to Canada without the written consent of the Minister, and that the person will leave Canada within the applicable 30-day period specified in the regulations for the purposes of A32.02(1).

4. REMOVAL OF PERSONS DESCRIBED IN A27(2)

Subsections A32(6) and A32(7) clearly indicate that in cases of serious violations of the Act, a deportation order should be the norm, and a departure order the exception. A32(7) specifies situations where a deportation order should be made when the adjudicator concludes that the person is found described in one of these categories.

A departure order may be made against the person concerned *only* if the adjudicator is satisfied that the person should be allowed to return to Canada without the written consent of the Minister, and if the adjudicator is satisfied that the person will leave Canada within the 30-day period specified in the regulations. The written consent of the Minister is required when a deportation order is made against the person.

A departure order does not prevent a person from returning to Canada, as long as the person meets the requirements related to admission to Canada. On the other hand, if the person who is the subject of a departure order does not leave Canada within the period specified in the regulations, and is not issued with a certificate of departure, the departure order will be deemed to be a deportation order at the expiration of the period specified.

If the person concerned is not making a refugee claim, or a refugee claim is not eligible, and where that person is found described in paragraph 19(1)(c), 19(1)(c.1), 19(1)(c.2), 19(1)(d), 19(1)(e), 19(1)(f), 19(1)(g), 19(1)(j), 19(1)(k), 19(1)(l) or 27(2)(h), the adjudicator has no choice but to make a deportation order. Where that person is not described in one of the categories just mentioned, two situations are possible: a deportation order or a departure order.

In the case of a person who claims refugee status, and where the refugee claim has been determined eligible by an SIO or where eligibility remains to be determined, and where that person is found described in paragraph 19(1)(c), 19(1)(c.1), 19(1)(c.2), 19(1)(d), 19(1)(e), 19(1)(f), 19(1)(g), 19(1)(j), 19(1)(k), 19(1)(l) or 27(2)(h), the adjudicator will make a conditional deportation order. Where that person is not described in one of the categories just mentioned, two situations are possible: a conditional deportation order or a conditional departure order.

5. REMOVAL OF A MINISTER'S PERMIT HOLDER

Where the Commission wishes to remove a Minister's permit holder, the person does not have to be referred to an immigration inquiry. Under A37(4) to A37(6), the Minister may at any time cancel a permit and make a deportation order against the person to whom the permit was issued.

APPENDIX H

ADJUDICATION RULES OF PRACTICE

This appendix provides CPOs with highlights of the *Rules Governing the Activities of, and the Practice and Procedure in, the Adjudication Division of the Immigration and Refuge Board* (the *Adjudication Division Rules*).

The *Adjudication Division Rules* have been harmonized with the *Convention Refugee Determination Division Rules* and the *Immigration Appeal Division Rules*. They include several new procedures, including:

- filing and service requirements
- provisions for abridging or enlarging time limits
- applications for joinder, change of venue and postponement or adjournment
- motions for confidentiality, and
- motions concerning other matters not specifically covered by the *Adjudication Division Rules*, such as applications asking for relief based on the *Canadian Charter of Rights and Freedoms*.

The rules regarding applications and motions do not preclude any party from making an application orally during the course of an inquiry. However, the adjudicator must determine that no injustice is likely to be caused to any party by accepting the oral application.

The *Adjudication Division Rules* are intended to assist the inquiry process, not to prolong or complicate it. You are expected to use your judgement in making written applications to the Adjudication Division. You should make written applications where time allows for adequate notice of the application to be given to all parties, and where the inquiry would be expedited. You should not make written applications if they would needlessly delay or impede the completion of the inquiry (by requiring an adjournment, for instance).

1. SERVICE OF DOCUMENTS

With the exception of the Request for Inquiry form provided by an SIO to the Adjudication Division [*Adjudication Division Rules*, rule 5(1)], documents on which you intend to rely in an application or motion to the Adjudication Division must be served and filed, with proof of service, at the appropriate Adjudication Division registry [rules 23(1) and 23(6)].

Service may be personal, by prepaid regular mail, by registered or certified mail, or by facsimile in accordance with rule 23(3).

You must attach proof of service to the original of the document served and filed in the Adjudication Division registry. Rule 25(2) allows you to file documents, with proof of service, by facsimile transmission.

You should append a copy of the proof of service to the file copy of each document served and retained on the client file. The person who actually effected service of the document must sign the proof of service, which you must complete in full for each document to be filed.

The Adjudication Division registry may refuse to accept for filing any documents presented without proof of service. In any case, documents filed without the required proof of service may be challenged by a party to the application or motion.

You should file proof of service using the sample form (Affidavit of Service) at the end of this appendix. The Adjudication Division does not require sworn affidavits of service, except in the case of a motion for confidentiality (*Adjudication Division rules,* rule 14). However, you must provide the Adjudication Division registry with the information contained on the sample Affidavit of Service form, and you must keep a file record to prove service of documents, if necessary. In the absence of a sworn affidavit of service, proof of service of a document is by oral evidence of the person who effected service.

2. APPLICATIONS

2.1 Motions for confidentiality

Motions for confidentiality are likely to be rare. Rule 21 provides specific requirements for these motions when they do occur, including strict stipulations for service and filing, for providing affidavit evidence in support of the position of the parties, and a statement of the law and argument to be relied on.

On receiving service of a motion for confidentiality, you should immediately notify your supervisor, who will contact the appropriate regional appeals office for assistance.

2.2 *Charter* matters

Rule 20 stipulates that every application not provided for in the *Adjudication Division Rules* shall be made by motion, unless the adjudicator decides that, in the interest of justice, the application should be dealt with in some other manner. Arguments based on the *Canadian Charter of Rights and Freedoms* will normally be heard by motion rather than during the inquiry.

You should take the position that the proper forum for the advancement of *Charter* arguments is a rule 20 motion. The rule provides for timely exchange of documents and allows time for consultation and preparation of the Minister's position on the matter to be argued.

You should note that rule 13 provides for disclosure when a party intends to call an expert witness.

You should keep in mind the need to comply with s. 57 of the *Federal Court Act*, which requires that notice be given to the federal Attorney General and the provincial Attorney General of intention to make a constitutional argument.

2.3 Applications

Rule 20 provides an informal means of disposing of certain procedural matters outside the inquiry itself. You may deal with applications for joinder (or severance), change of venue, and postponement or adjournment in this manner.

You do not have to make applications by notice of motion and affidavit. A letter setting out the relief requested and the basis for the relief, together with any documentary evidence on which the application for relief is based, will be sufficient to satisfy the requirements of the rule. You must meet the requirements of rule 23 concerning service and filing.

If satisfied that all parties have had a reasonable opportunity to make submissions, the adjudicator may determine the application and will advise all parties of his or her decision.

You may raise orally within the inquiry all matters that may be the subject of applications outside the inquiry, so long as the adjudicator is satisfied that no injustice is likely to be caused to any party.

3. CONFERENCES

Rule 12 allows the Adjudication Division to direct the parties to an inquiry to appear at a conference to ensure a full and proper hearing and to dispose of the inquiry expeditiously. The Adjudication Division will probably use rule 12 only in exceptionally complex or contentious inquiries.

The rules of procedural fairness require all parties to an inquiry or hearing to disclose to all other parties the case on which they intend to rely. As a general rule, you should make every effort to discuss contentious issues with counsel as a way of minimizing issues to be raised at the inquiry.

Disclosure does not require you to inform counsel or the person concerned in advance of evidence in your possession on which you do not intend to rely at the inquiry.

4. WITNESSES

Rule 16 provides a procedure or obtaining a summons to witness from the Adjudication Division. A party obtaining a summons must serve the summons and pay the witness the applicable fees and allowances set out in Tariff A of the *Federal Court Rules*. Tariff A provides that witnesses are to be paid $20 per day of attendance plus reasonable and proper transportation and living expenses or, if it is larger, the fee or allowance in similar circumstances in a superior court of the province where the witness appears. If you are making application for a summons to witness, you should consult the relevant sections of the Rules of Practice in the province where the witness is to appear to ascertain the correct amount of appearance money to be paid the witness.

Rule 17 allows the Adjudication Division, on application, to issue a warrant for the arrest of a person who fails to attend in answer to a summons, and provides a means to compel attendance of a witness.

APPENDIX I
DETENTION REVIEWS FOR A103.1 CASES

1. GENERAL

Persons who are unable to satisfy an immigration officer as to their identity or persons who, in the opinion of the Deputy Minister or the Deputy Minister's designate, may be members of the inadmissible classes described in A19(1)(e), (f), (g), (j), (k), or (l) may be detained by an SIO at review for a period not exceeding 7 days [A103.1(1)(b)]. If continued detention under A103.1 is desirable, a Minister's certificate must be sought [see item 26 of CID–2 at Chapter IL 3].

2. IDENTITY ESTABLISHED DURING PERIOD OF CONTINUED DETENTION

Where, following the review of detention by an SIO, a person's identity and background is satisfactorily established, the person concerned must be brought forthwith before an adjudicator. The Minister's authority in this regard under A103.1(12) has been delegated to, among others, local office managers and senior immigration officers [see item 26 of CID–2 at Chapter IL 3].

The SIO/CPO will present to the adjudicator the Opinion of the Minister (form IMM 5012) to the effect that identity has been established. At that time the usual grounds for detention or release under A103(3) would apply [A103.1(6)].

3. CERTIFICATES TO EXTEND DETENTION

As there may be unavoidable delays in obtaining information to confirm a person's identity, an additional period of detention is available for further investigation. In all cases a signed statement as follows is required to certify that the additional period is necessary to investigate the person's identity [item 26 of CID–2]:

i) Certificate Pursuant to Subparagraph 103.1(2)(a)(i) and Paragraph 103.1(2)(b) of the Immigration Act (form IMM 1446) or

ii) Certificate Pursuant to Subparagraph 103.1(2)(a)(ii) and Paragraph 103.1(2)(b) of the Immigration Act (form IMM 5004).

Managers are to assess the need for an additional period of detention based upon the information provided by immigration officers concerning ongoing efforts to identify the individual, and any indications of the anticipated time necessary for the receipt of identity information. Detention will continue as long as the adjudicator is satisfied that every reasonable effort is being made to identify the individual [A103.1(5)].

As detention pursuant to A103.1(2) may be lengthy, a person should be referred for a medical examination if an adjudicator maintains detention.

Given the short time frame in which to apply for a detention certificate under A103.1(2), requests are to be sent by fax to the regional Director General/Director of Immigration (Instrument I-36) clearly marked "URGENT". The fax is to be followed up immediately by telephone to confirm that a request has been sent to alert RHQ of the situation at the earliest point.

Reports in these cases should provide details concerning information currently available to support the alleged inadmissibility, as well as an indication of any delays expected in obtaining information to confirm that the grounds for continued detention exist.

The detention certificate (IMM 1446 or IMM 5004) must be issued prior to the expiry of the initial 7 day period if the Minister thereafter wishes to seek a person's detention on the grounds of a need to investigate identity or background. If the detention certificate is not issued before the expiration of the 7 day period, the adjudicator will conduct a review pursuant to A103.1(3) and will decide whether to release or detain based upon the usual considerations under A103(3).

When the Minister certifies in writing that a period of detention beyond the initial 7 days is required to investigate a person's identity, the person must be brought before an adjudicator forthwith and at least once every 7 days thereafter.

As soon as identity has been established, the procedure in 2.will be applied.

4. AMENDED CERTIFICATES TO EXTEND DETENTION [A103.1(3)]

Once a person has been detained for the investigation of identity and the person's identity has been established, the Minister may then have reason to suspect that the person may pose a security risk. A103.1(3) allows the Minister to require that detention be continued based upon an amended certificate. Where an Amendment of Certificate Pursuant to subsection 103.1(3) of the Immigration Act (form IMM 5003) is issued, the individual must be brought forthwith before an adjudicator rather than wait for the next scheduled seven-day review.

The Minister's authority in this regard (A103.1(3)) has not been delegated.

Given the short time frame in which to apply for an IMM 5003 certificate, requests are to be sent by fax (819-953-8119) to the Director General, Enforcement Branch, NHQ clearly marked "URGENT - SAME-DAY DELIVERY", with a copy to the regional Director General/Director of Immigration. The fax is to be followed up immediately by telephone (819-994-4871) to confirm that a request has been sent and to alert NHQ of the situation at the earliest point.

Requests to NHQ in these cases are to include full details to support the suspicion of a security risk.

5. PREPARING SUBMISSIONS FOR A103.1 DETENTION REVIEWS

Adjudicators will continue to detain for identity investigations only when you prove that, in light of the circumstances, the Minister is taking appropriate steps to determine the person's identity. The assessment regarding these reasonable efforts being made by the Minister is based on the facts of each individual case. If you cannot satisfy the adjudicator that the Minister is making reasonable efforts to complete the identity investigation, the adjudicator will detain or release the person on the usual grounds under A103(3).

An adjudicator may also determine that the Minister's continued efforts to investigate identity can no longer be considered as reasonable since in the adjudicator's opinion, the available information satisfactorily establishes identity.

You should describe to the adjudicator the special circumstances or elements of the investigation which prove that the requirements for "reasonable efforts" is being met. Adjudicators will expect precise information. They should be advised, for example, that fingerprints and a photograph were sent to the relevant foreign government authorities for verification on a specific date and that a reply is expected within a certain time frame. The adjudicator will likely hold you accountable for meeting time frames or for justifying delays which occur. It is, therefore, important that you are realistic when making commitments.

In preparing a submission on the investigation of a person's identity, you should include such factors as:

- the degree of cooperation exhibited by the person
- the likelihood that the necessary information may be obtained
- the availability and credibility of witnesses, such as family or friends who may be able to assist in the verification of the person's identity
- the evidence of expert witnesses, such as police or consular/government officials.

IMMIGRATION

Canada

Chapter EC 3
Eligibility and Administrative Orders



Abbreviations and Short Forms	
Act	*Immigration Act*, as amended
CIC	Canada Immigration Centre
Commission	Canada Employment and Immigration Commission
Convention	United Nations 1951 *Convention Relating to the Status of Refugees* and 1967 *Protocol Relating to the Status of Refugees*
CRDD	Convention Refugee Determination Division
EIC	Employment and Immigration Canada
FOSS	Field Operational Support System
IAD	Immigration Appeal Division, Immigration and Refugee Board
IO	Immigration Officer
IRB	Immigration and Refugee Board
Minister	Minister of Employment and Immigration
PIF	Personal Information Form
SIO	Senior Immigration Officer

1. INTRODUCTION 1
1.1 What this chapter is about 1
1.2 Policy intent 1

2. INFORMATION FOR CLAIMANTS 3
2.1 Mail-in procedure 3
2.2 CRDD kit 3

3. DUTIES AND OBLIGATIONS 4
3.1 Procedural fairness 4
3.2 Burden of proof 5
3.3 Duty to provide information 5
3.4 Official Languages Act 5
3.5 Interpreters 5

4. DETERMINING ELIGIBILITY 6
4.1 Your jurisdiction 6
4.2 FOSS 6
4.3 Multiple claims 6
4.4 Who is not eligible? 7
4.5 Ministerial intervention 10
4.6 Referring a claim to the CRDD 11
4.7 Referring ineligible persons to the CRDD 13

5. DETERMINING ADMISSIBILITY AND RIGHT TO REMAIN 14
5.1 Your jurisdiction 14
5.2 Considering A19(2)(d) and A19(1)(i) 15
5.3 Considering A27(2)(e), A27(2)(f), A27(2)(h) and A27(2)(k) reports 16

6. MAKING ADMINISTRATIVE REMOVAL ORDERS 17
6.1 Exclusion orders 17
6.2 Departure orders 18
6.3 Conditional departure orders 18
6.4 Conditional and effective orders 18
6.5 Completing orders 19
6.6 Appeals to the IAD 20

7. YOUR DETENTION AND RELEASE AUTHORITY 22
7.1 Detention 22
7.2 Release 22
7.3 Reviews of A103.1(1)(a) cases (identity) 23

8. OTHER PROCEDURES 25
8.1 Counsel 25
8.2 Adjournment 25
8.3 Unaccompanied minors and incompetents 26
8.4 Included dependants 26
8.5 Charter arguments 26
8.6 Your obligations under the *Immigration Appeal Division Rules* 26
8.7 Judicial review 27

8.8 Admissibility on humanitarian and compassionate grounds 28
8.9 Claims to Canadian citizenship 29
8.10 Claims to permanent residence 29

APPENDIX A
COUNTRIES PRESCRIBED UNDER A114(1)(s)
[RESERVED] 31

APPENDIX B
REQUESTING THE MINISTER'S OPINION UNDER A46.01(1)(e)(i) AND A46.01(1)(e)(ii) 33

1. Requesting the Minister's opinion 33
   1.1 Danger to the public [A46.01(1)(e)(i)] 33
   1.2 Contrary to the public interest [A46.01(1)(e)(ii)] 33
2. Evidence required to seek the Minister's opinion 33
   2.1 Danger to the public [A46.01(1)(e)(i)] 33
   2.2 Contrary to the public interest [A46.01(1)(e)(ii)] 34
3. Notice to the person concerned 34
4. Extension of time 34
5. Service of notice 34
6. Suggested wording for the notice to the person concerned 34
7. Forwarding representations 35

1. INTRODUCTION

1.1 What this chapter is about

This chapter describes how senior immigration officers (SIOs) determine who is eligible to enter Canada's refugee determination system, and when they make administrative removal (exclusion, departure and conditional departure) orders.

The Minister has determined that only those SIOs who have received a specialized training course and are referred to in Instrument I-17 can exercise the authorities outlined in this chapter.

1.2 Policy intent

The *Immigration Act*, as amended, allows you as an SIO to exercise three new administrative decision-making authorities. These are:

- to determine certain cases of inadmissibility and certain violations of the *Immigration Act*
- to determine the eligibility of claimants to be referred to the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board (IRB), and
- to make administrative removal orders.

The principle underlying these changes is that in many cases, the facts to be determined are straightforward and can be the subject of an administrative decision. More complex issues, such as criminality, will continue to be considered by an adjudicator.

The eligibility criteria specified in A46.01 have been clarified to ensure that these factors allow for objective administrative decision-making.

> *Note: References to the Immigration Act, as amended, appear in the text in this chapter with an "A" prefix followed by the section number, as here: the Act, section 46.01.*

In making eligibility decisions, you must be guided by an understanding of Canada's international obligations as signatory to the 1951 United Nations *Convention Relating to the Status of Refugees* and its 1967 *Protocol* ("the Convention"), and the constitutional guarantees available to all persons in Canada under the *Canadian Charter of Rights and Freedoms*.

Protection is the objective governing your decision-making. The overriding intent is to assist rather than to deny access to the process. All persons are entitled to hearings of their claims unless:

- they do not need to have a claim determined because they already have refugee status in another country to which they can be returned
- their refugee claim has already been dealt with since their last coming into Canada

- they could have had their claim considered in a prescribed country from which they came to Canada, or
- they do not deserve Canada's protection because they are criminals or security risks.

Allegations that persons are either criminals or security risks must be determined by an adjudicator before you can decide on eligibility.

A person who has been found to be a Convention refugee who is in Canada, and a person who has been found not eligible to have a claim determined by the CRDD because he or she is described in A46.01(1)(a), may not be removed in circumstances where that person's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group or political opinion, unless the person is a member of certain inadmissible classes and the Minister is of the opinion that the person constitutes a danger to the public in Canada or a danger to the security of Canada [A53(1)(a), A53(1)(b)].

2. INFORMATION FOR CLAIMANTS

2.1 Mail-in procedure

In some circumstances, a claim to be a Convention refugee received at an inland office can be handled by mail. Persons making a claim will be provided with an information kit to be completed and returned to the designated inland office.

Claimants should note that the admissions they make in the information kit may result in a report about them, which could result in their removal from Canada. The kit contains a conditional waiver which the claimant will execute, admitting to certain facts in issue and consenting to the making of a conditional removal order if the eligibility determination is positive.

You need not conduct an in-person interview if the information provided by the claimant indicates *informed* consent to the procedure and you can make a positive eligibility decision.

Persons eligible to participate in the program will be advised by mail. A conditional removal order will be made and the claim will be referred to the CRDD for a determination.

You must conduct an in-person interview if the information provided by the claimant indicates that your eligibility determination might be negative.

2.2 CRDD kit

You should provide a CRDD kit to each claimant referred to the CRDD for a determination of a refugee claim. The kit contains important instructions for processing a refugee claim in Canada.

3. DUTIES AND OBLIGATIONS

3.1 Procedural fairness

The principles of administrative fairness apply to your powers, as they do to the whole immigration process. Persons must be provided with the degree of participation in the process necessary to bring to your attention any facts or arguments of which you, as a fair-minded official, would need to be informed to reach a rational decision.

You are under a duty to act impartially: that is, as a disinterested decision-maker.

You will usually conduct face-to-face interviews. In circumstances where an SIO is not readily available, it may be appropriate for you to conduct an interview by telephone. If, during a telephone interview, it becomes apparent that you may make a negative decision, adjourn the telephone interview until you can make arrangements to conduct a personal interview.

At inland offices, persons may wish to take part in the mail-in program designed to speed up their immigration matters. In such cases, persons may wish to waive an in-person interview.

Persons should never be the subject of a negative eligibility decision without the benefit of a personal interview.

Persons must be informed of the nature of the allegations in the report made against them at the earliest opportunity, and must be given a reasonable opportunity to respond to those allegations. The same principle applies to determining eligibility to make a claim to the CRDD.

Persons are to be informed of their right to retain and instruct counsel where an inquiry is to be held or where a person has been detained.

Decisions you make about eligibility and admissibility may be subject to judicial review, with leave, by the Federal Court of Canada. Certain decisions you make may be subject to appeal to the Immigration Appeal Division (IAD).

It is important that you make notes detailing the process you followed in exercising your decision-making powers. You have Case Highlight Forms for both port-of-entry (form IMM 5051) and inland (form IMM 5084) processes; complete them in as much detail as possible.

You should place on the file any additional notes detailing, for example, the presence and identity of counsel, circumstances relating to detention or release, and the basis for any decision you take.

In reaching your decisions, you must take into account any representations made by persons or by their counsel. Make particular note of the nature and content of any representations made.

3.2 Burden of proof

The *standard of proof* in immigration matters is the balance of probabilities. You must determine whether the evidence on the whole shows that the facts in issue are more probable than not. The *burden of proof* is the obligation to meet the requirement that a fact in issue be proved or disproved.

The *burden of proof* in eligibility determination rests with the person seeking access to the refugee determination system [A45(4)]. In the absence of conclusive evidence that the person concerned is ineligible, you should resolve eligibility in favour of the claimant.

The burden of proving that a person is entitled to come into Canada, or may be admitted, rests with that person [A8(1)]. While the burden of proof in port-of-entry cases rests with the person seeking admission, you must still ensure that your admissibility and eligibility decisions can be supported in fact and in law.

The burden of proving that a person in Canada should not be allowed to remain, and should therefore be removed, rests with the Commission.

3.3 Duty to provide information

A person claiming at a port of entry or at an inland office that he or she should be allowed to come into, be admitted or remain in Canada, as the case may be, shall truthfully provide such information as you may require to establish that the person should be allowed to come into, be admitted or remain in Canada, as the case may be [A23(4.1), A27(5)].

The same obligation applies to persons claiming to be Convention refugees who are referred to you for a determination about eligibility [A45(5)].

These sections of the Act are analogous to those concerning persons required to give information for the purpose of an examination under A12(4), and are provided to place the person concerned under a legal obligation.

Although there is no way of compelling persons to provide truthful information, knowingly providing false or misleading information is an offence under A94(1)(h.1).

3.4 *Official Languages Act*

Members of the public have a right to communicate with employees of Employment and Immigration Canada (EIC) in the official language of their choice, either French or English. An SIO will be provided who speaks the official language requested by a person.

3.5 Interpreters

You must be satisfied that the person concerned is able to understand and communicate in either of the official languages in which the proceeding is being held. If need be, an interpreter is to be provided to enable the person to fully understand and communicate with you. When the services of an interpreter cannot be obtained, you may adjourn on grounds of operational necessity.

4. DETERMINING ELIGIBILITY

4.1 Your jurisdiction

A person may make a claim to be a Convention refugee at any time throughout the administrative or inquiry process before the making of an order [A44(1)]. Wherever the claim occurs, the eligibility determination is exclusively your function.

An immigration officer (IO) receiving a claim to be a Convention refugee will immediately refer the claim to an SIO [A44(2)].

You may receive claims for eligibility determination as follows:

- a claim referred by an IO [A44(2)]
- a claim accompanying a report and direction for inquiry under A27(3)(b)
- a claim made during an SIO determination under A27(4)
- a claim made by a person arrested under A103(2), and
- a claim made by a person who is in status.

If you receive a Convention refugee claim, you must determine whether the person making the claim is eligible to be referred to the CRDD [A45]. However, an adjudicator must determine certain allegations of criminality at an inquiry before you can make an eligibility decision [A45(2)].

4.2 FOSS

The Field Operational Support System (FOSS) assists the process for determining eligibility and referring claimants to the CRDD. You should refer to the FOSS Reference Guide for Bill C-86 implementation.

4.3 Multiple claims

When a person makes more than one claim to be a Convention refugee, those claims shall be deemed to be one claim for the purposes of the Act [A44(5)]. The general principle is that a person who has been previously found eligible and referred to the CRDD will be allowed to pursue the claim *without* another eligibility determination. When you receive a multiple claim, follow these procedures:

1. **If the person arrives at a port of entry before the original CRDD hearing date:**
   - write a new A20(1) report. If new allegations fall outside your jurisdiction, cause an inquiry before an adjudicator.
   - make a conditional departure order and consider detention, release and terms and conditions. Do *not* refer the case to the CRDD again. Counsel the person to report for the original CRDD hearing date.

- if you think that the person's absence from Canada may affect the outcome of the CRDD hearing, inform the regional appeals office. The appeals office may wish to participate at the CRDD hearing, particularly in cases where a person leaves Canada and returns to the country of persecution [see A69.1(10.1)].

2. **If the person arrives at a port of entry after the scheduled CRDD hearing date:**

   - write a new A20(1) report. If new allegations fall outside your jurisdiction, cause an inquiry before an adjudicator.
   - check FOSS to determine whether the CRDD has declared the previous claim to be abandoned. If the information on FOSS is not conclusive, contact the CRDD to clarify the status of the previous claim.
   - if the CRDD has declared the claim abandoned:
     - conduct an eligibility determination under A46.01(1). If the person has returned to Canada within 90 days since last coming into Canada, the person is not eligible. Proceed to make an exclusion order.
     - if the person returns after 90 days, consider the matter as a new claim and determine eligibility in accordance with procedures.
   - if the CRDD has not declared the claim abandoned, do not determine eligibility. Allow the person to pursue the claim. Make a conditional departure order and take the steps in section 4.3, sub–section 1. above.

Where multiple claims have been made and more than one conditional order has been made, all such orders become effective simultaneously.

4.4 Who is not eligible?

The *Immigration Act* provides six grounds on which you must find that a claim is not eligible for determination by the CRDD [A46.01]:

1. **A person who has been recognized as a Convention refugee by any country other than Canada and can be returned to that country [A46.01(1)(a)]**

   Persons who have prior protection as refugees are not eligible for determination by the CRDD if they can be returned to the country of first asylum.

   A person may be in possession of an identity or travel document stating that the person has been granted refugee status in the issuing country. You must be satisfied that the person was granted refugee status under the Convention. Some countries grant temporary refugee status or asylum that does not necessarily comply with the requirements of the Convention.

   If you find a person to have been recognized as a Convention refugee, and the person claims that he or she cannot be returned to the recognizing country, you must make an assessment as required by A53(1). Follow these procedures:

   - issue a negative eligibility document, using FOSS (see the FOSS Reference Guide for Bill C-86).

- make an effective removal order, refer the person to inquiry or allow the person to leave.
- have the claimant make a detailed declaration about the circumstances of the granting of refugee status in the asylum country, and the reasons for the alleged fear of persecution in that country. Use a standard statutory declaration form. If necessary, have the declaration translated for the claimant before you and the claimant sign it. If you use the services of an interpreter, ensure that the interpreter declaration is completed.
- consider whether the person should be released or detained. If released, impose terms and conditions that include requiring the person to report, according to regional guidelines, at a specific time and place, where the claimant will be told whether an entitlement to protection under A53 exists.
- deliver a copy of the declaration and a copy of all relevant information in the file *immediately* to the appropriate regional office. The regional office will relay a decision to the person according to regional guidelines and the file will be processed accordingly.
- persons requesting an opportunity to submit an amended declaration may do so. Retain the original declaration.

2. A person who came to Canada directly or indirectly from a country referred to in A46.01(1)(b)

Note: This paragraph will be inoperative until a list of countries is prescribed. AUCUN LIEN is reserved for a list of countries prescribed under A114(1)(s).

A46.01(1)(b) refers to a country, other than the country of a person's nationality or, where a person has no country of nationality, the country of a person's habitual residence, that is a prescribed country under A114(1)(s).

A114(1)(s) stipulates that the Governor in Council may make regulations prescribing countries that comply with Article 33 of the Convention for the purpose of sharing responsibility for the examination of persons who claim to be Convention refugees.

A person may have come to Canada directly or indirectly through a country which shares responsibility for the examination of persons who claim to be Convention refugees, and which complies with Article 33 of the Convention. This person is not eligible for determination of a claim in Canada, because the person could avail himself or herself of protection as a Convention refugee in that country before arriving in Canada, and because the person is assured that the country will deal with his or her claim on return to that country.

Subject to any agreement entered into under A108.1, persons who are in a country solely for the purpose of joining a connecting flight to Canada are not considered to have come to Canada from that country [A46.01(3)(a)].

Persons who come to Canada from a country are considered as coming to Canada from that country whether or not they were lawfully in that country [A46.01(3)(b)].

The Minister may suspend the operation of A46.01(1)(b) for specific periods or for specific classes. In cases where removal under this provision is unsuccessful, please see section 4.7 below [A46.03(1)].

3. **A person who has, since last coming into Canada, been determined by the CRDD not to be a Convention refugee, or to have abandoned the claim, or has been determined by an SIO not to be eligible to have a claim determined by the CRDD [A46.01(1)(c)]**

For the purpose of eligibility under A46.01(1)(c), if a person goes to another country and returns to Canada within 90 days, do not consider the person as coming into Canada on that return [A46.01(5)]. This provision prevents someone from making repeated claims to be a Convention refugee.

To determine the day a person last came to Canada, do not include the day the person left Canada as part of the 90-day period outside Canada. A person who came to Canada on the 91st day following the day of departure and made a claim would be eligible to have a new claim determined *[Berrahma v. Minister of Employment and Immigration*, FCA, Doc. No. A-759-90, February 21, 1991].

4. **A person who has been determined under the Act or its regulations to be a Convention refugee [A46.01(1)(d)]**

Persons whose claims have already been determined in Canada are not eligible, because they have already been determined to be Convention refugees.

A46.01(1)(d) includes persons accorded Convention refugee status by Canadian visa officers abroad in accordance with section 7 of the *Immigration Regulations*, as persons previously found to be Convention refugees under the *Immigration Act*.

5. **A person whom an adjudicator has determined to be a person described in A19(1)(c) or A19(1)(c.1)(i), and whom the Minister believes to be a danger to the public in Canada; or a person described in A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k) or A19(1)(l), and whose claim the Minister believes it would be contrary to the public interest to have determined under the Act**

Under the terms of the Convention, a country is not obliged to provide protection where the person poses a danger to security and public order. Accordingly, persons who constitute such a danger are not eligible for a determination of their claim in Canada.

If you receive a report containing any of the allegations in this section, or if you believe on reasonable grounds that a person could be described under one of those allegations, you must cause an inquiry before an adjudicator as soon as practicable. You cannot determine eligibility until an adjudicator decides on the allegation.

You must find the person not eligible if the adjudicator finds:

- that the person is described in the allegation under A19(1)(c) or A19(1)(c.1)(i), and if you are provided with the Minister's opinion that the person constitutes a danger to the public in Canada [A46.01(e)(i)], or
- that the person is described in A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k) or A19(1)(l), and if you are provided with the Minister's opinion that it would be contrary to the public interest to have the claim determined in Canada [A46.01(e)(ii)].

Appendix B explains how to obtain the opinion of the Minister.

6. **A person who has previously been determined not to have a credible basis for a claim to be a Convention refugee**

A person who claimed to be a Convention refugee before February 1, 1993, who was found not to have a credible basis for a claim, and who was issued a departure notice but failed to comply with that notice and did not leave Canada, is ineligible [A46.01(1.1)]. This provision ensures that such a person does not have repeated access to the refugee determination system.

4.5 Ministerial intervention

The Minister has the right to be represented before the CRDD to present evidence concerning a determination [A69.1(5)], and if the CRDD considers it appropriate, is allowed to question the claimant or any other witnesses and to make representations concerning the claim. The Minister does not usually exercise this right. Questioning witnesses and making representations at CRDD hearings is primarily the role of the refugee hearing officer [A68.1].

When you refer a person who has made a claim to be a Convention refugee to the CRDD for a hearing [A46.02 or A46.03], the Minister is entitled to request in writing that the CRDD provide the Minister with a copy of the Personal Information Form (PIF) [A69.1(2)].

You must make a ministerial request *at the time of referral to the CRDD*: that is, at the time eligibility is determined [A69.1(2)]. You make the request by completing the *request* field in the *eligibility* screen of the FOSS refugee module. The IRB will then forward the information to the appropriate regional appeals office.

The regional appeals office will review the PIF to determine whether the Minister should intervene. Appeals officers represent the Minister at interventions before the CRDD and may present evidence on behalf of the Minister [A69(1)].

If you make a request for ministerial intervention and the Minister is of the opinion that matters involving either the exclusion clauses (sections E or F of Article 1 of the Convention) [A2(1)] or cessation clause [A2(2)] are in issue, the appeals officer may:

- present evidence
- question the person making the claim and any witnesses, and
- make representations concerning the disposition of the claim.

If you make a request for intervention for reasons other than exclusion or cessation, the CRDD may, *in its discretion*, allow the appeals officer to appear at the CRDD hearing for any or all of the purposes just described.

Normally, SIOs request PIFs only in exceptional cases, as a result of instructions by Regional or National Headquarters.

A request under A69.1(2) may be appropriate in the following circumstances:

- if you believe that a case falls within Article 1.E of the Convention: that is, that the person is not considered to be in need of international protection because the person has taken up residence in a country which has afforded to the person the rights and obligations attached to nationals of that country
- if you believe that a case falls within Article 1.F of the Convention: that is, war crimes, crimes against humanity, serious non-political crimes or acts contrary to the purposes of the United Nations, and
- cases of more serious criminality, cases that attract the attention of the news media because of their controversial nature, and cases that could affect the security of Canada or its relationship to other countries.

You must have concrete and relevant evidence to justify requesting the PIF at the time of referral. If you are in any doubt about the appropriateness of a request for ministerial intervention, you should consult your supervisor, who in turn may wish to contact the regional appeals office or the National Headquarters appeals unit for guidance.

4.6 Referring a claim to the CRDD

Use the following procedures in conjunction with those for determining eligibility and making administrative removal orders.

If you determine a person to be eligible, refer the claim to the CRDD according to rule 6 of the *Convention Refugee Determination Division Rules*, using the procedures below.

Whether your determination is positive or negative, you must advise the person of your determination in writing [A45(3)]. Generate the required eligibility-determination form from FOSS.

If your determination was negative, the FOSS-generated determination form will indicate the basis for your decision [A45(3)]. The basis for your decision will be one of the six disqualifications listed in section 4.4 of this chapter.

You can use the FOSS *remarks* section to add further details, such as the date and file reference of a previous negative credible-basis decision, the country prescribed by regulation made under A114(1)(s) from which a person came to Canada and made a claim to be a Convention refugee, and the details of previous recognition as a Convention refugee by another country.

If your determination was positive, you must issue a FOSS-generated Referral to CRDD form, directing the claimant to appear before the CRDD at a specific time and date. This involves three actions.

- use FOSS to forward the following information to the registry designated by the CRDD:
  - your determination of eligibility
  - the section of the Act under which you are referring the claim
  - the name, sex, date of birth and citizenship of the claimant
  - if available, the address and telephone number of the principal claimant in Canada
  - if available, the name, address and telephone number of the counsel of the principal claimant
  - the country or countries in respect of which the claimant fears persecution
  - the official language chosen by the claimant and, where applicable, the language or dialect of the interpreter required by the claimant
  - if applicable, the location of detention of the claimant
  - if applicable, the names of the family members of the claimant whose claims have been referred to the CRDD, and the FOSS client identification number relating to those family members
  - whether or not the Minister has requested the PIF under A69.1(2)
  - the date on which you referred the claim
  - your name
  - the FOSS identification number of the claim, and
  - the date and method of service by which you gave the claimant the form (the PIF) that sets out the information required from the claimant under rule 14(1) of the *CRDD Rules*.
- serve the claimant with the IRB information kit that the claimant must complete under rule 14(1) of the *CRDD Rules*, which sets out in detail the information required for refugee claimants by the IRB. Include the claimant's FOSS identification number in the space provided in the kit.
- forward by mail to the CRDD a copy of any identity and travel documents of the claimant that are in your possession. Include the FOSS identification number.

If FOSS transmission is temporarily unavailable, take the following steps:

- complete the Determination of Eligibility and Referral to the CRDD (form IMM 5239) manually and give the claimant the appropriate copy.
- manually complete and issue the IRB Notice to Appear. The date and time for appearance before the CRDD is to be the next business day which is 8 weeks from the date of issue of the notice, at 8:30 a.m.
- handwrite the address of the appropriate IRB office on the notice. For Ontario cases, the appropriate IRB office will be based on the IRB country list.

- provide the claimant with a copy of the notice to appear, retain a copy for the client file and have the pink copy of the notice sent by mail to the appropriate IRB office.
- provide the claimant with an IRB refugee kit and enter the FOSS client identification number on the kit in the space provided.
- complete a manual claim referral form (IMM 5243) to obtain the information required to comply with rule 6 of the *CRDD Rules*.
- update FOSS as soon as possible so that information on the IMM 5243 can be transmitted to the IRB electronically. If this cannot be accomplished within 2 business days, send the IMM 5243 to the IRB by courier or, if possible, use a FOSS terminal at another CIC to complete electronic transmission. This procedure applies to Newfoundland, except that for claimants who are not remaining in Newfoundland, ascertain the claimant's intended destination and forward the information to the IRB office appropriate to the claimant's destination.

4.7 Referring ineligible persons to the CRDD

If you determine a person not to be eligible and make a removal order, there are three circumstances where you will refer the claim to the CRDD anyway [A46.02]. These circumstances, which all arise after a person has been found not to be eligible under A46.01(1)(b), affect:

- persons who cannot be removed from Canada to a country prescribed under A114(1)(s)
- persons who, having been removed from Canada, are allowed to come into Canada under A14(1)(c), and
- persons who, having been allowed to leave voluntarily, have not been permitted to enter the country from which they came to Canada and are allowed to come into Canada under A14(1)(c) [A46.03(1)].

To refer persons to the CRDD for these reasons, follow these procedures:

- complete the *eligibility results and referral* screen in FOSS. Enter a *Y* in the *46.03(1)* field.
- use option *PF* to generate the ineligibility document and the Referral to CRDD under A46.03(1) document. FOSS will also generate a Notice to Appear document at this time.
- give the person the correct copy of each form and retain the remaining copies on file. Do *not* send a copy of the Referral to CRDD under A46.03(1) form to National Headquarters for microfilming.
- *when FOSS is unavailable*, complete a handwritten Referral to CRDD under A46.03(1) document (form IMM 5240). Complete the Notice to Appear document by hand.
- when FOSS becomes available, complete the *eligibility results and referral* screen and complete the *documentation issue date* field.

5. DETERMINING ADMISSIBILITY AND RIGHT TO REMAIN

The *Immigration Act*, as amended, now allows you to make a determination that a person is described in certain reports, and to make the administrative removal order required by the Act.

You may make three types of administrative orders: an exclusion order, a departure order and a conditional departure order.

5.1 Your jurisdiction

At **ports of entry**, you deal solely with the admissibility to Canada of the following persons who do not claim to be Canadian citizens or permanent residents of Canada:

- persons who seek to come into Canada without having first obtained the consent of the Minister, where required by the Act [A19(1)(i), A55], and
- persons who are not in possession of a valid and subsisting passport, visa or student or employment authorization [A19(2)(d), A9(1), A10; *Immigration Regulations*, subsections 13(4), 14(1), 14(3)] and who are not persons to whom a document was provided under A10.3.

If information comes to your attention that a person is a member of an inadmissible class of persons referred to in A32(5)(a), you cannot assume jurisdiction even though such an allegation is not included in the report referred to you by the examining officer.

If the IO's report contains one or more allegations that are not within your jurisdiction, you are not authorized to deal with *any* of the allegations contained in the report [A23(4)].

At **inland offices**, on receiving a direction for determination [A27(3)(a)] you decide whether the following persons, already in Canada and not claiming to be Canadian citizens nor permanent residents, may be allowed to remain in Canada:

- persons who came into Canada as visitors and who have remained in Canada for a period of time greater than that for which they were authorized to remain [A27(2)(e), A26(1)(c)]
- persons who came into Canada at a place other than a port of entry and failed to report forthwith to an IO, eluded examination or inquiry under the Act or escaped lawful custody or detention under the Act [A27(2)(f)]
- persons who came into Canada without first having obtained the written consent of the Minister where required [A27(2)(h), A55], and
- immigrants who were allowed to come into Canada on condition that they be present for further examination by an IO as directed, but who have failed to report as required [A27(2)(k)].

The Deputy Minister's delegate may, on receiving a report written under A27(2), reinstate the status of certain persons, direct a report to an SIO for determination, or in any case direct that an inquiry be held [A27(3)].

If a report or a notice of arrest contains one or more allegations that you are not authorized to consider, or if you have reasonable grounds to believe that a person referred to in a direction for determination or notice of arrest is a person who could be described in any paragraph other than those which you can consider, you are not authorized to consider *any* of the allegations in the report or the notice of arrest.

5.2 Considering A19(2)(d) and A19(1)(i)

Determine whether the person concerned:

- may come into Canada under A14(1) [A22]
- should be granted entry or landing into Canada under A23(1), A23(2) or A19(3)
- should be issued a Minister's permit [A37]
- shall be allowed to leave Canada forthwith [A23(4)]
- shall be excluded from Canada [A23(4)], or ordered to depart Canada conditionally if you find the person concerned eligible to have a claim determined by the CRDD [A28(1), A45], or
- shall be directed to an inquiry [A23(4.2)], or directed back to the USA until an adjudicator is available [A23(5)], or be detained, or released, with or without terms and conditions [A23(3), A23(6), A103(3.1)]

In a case where you do not make an exclusion order or a conditional departure order, you must cause an inquiry to be held as soon as is reasonably practicable, or allow the person to leave Canada forthwith, unless the person is alleged to be described in A19(1)(k) [A23(4.2)]. If the person is alleged to be described in A19(1)(k), you must not cause an inquiry to be held unless the required security certificate is issued [A23(4.3)].

If you believe that a person is a member of an inadmissible class of persons referred to in A32(5)(a), or a report contains allegations that are not within your jurisdiction, you must refer the person to an inquiry. Follow these procedures:

- complete the Notice of Inquiry Caused by a Senior Immigration Officer (form IMM 5246)
- ensure that any allegations not appearing in the report, but which you wish the adjudicator to consider at inquiry, are included in the notice of inquiry
- explain to the person the nature of the allegations which you are adding to the notice of inquiry, and the basis on which you have decided to add the allegations
- make a notation on the file that you have put the person on notice of allegations which are not contained in the A20(1) report, and

- ensure that detailed notes supporting the additional allegations, together with any supporting evidence, are retained on the file. Do a memo for the case presenting officer detailing the additional allegations and explaining the circumstances under which they arose.

5.3 Considering A27(2)(e), A27(2)(f), A27(2)(h) and A27(2)(k) reports

On receiving a report and direction for determination under A27(3)(a), or a notice of arrest under A103(2), you will:

- allow the person to remain in Canada, if it would not be contrary to the Act or its regulations to do so, or
- make a departure order against the person, if you are satisfied that the person is a person described in A27(2)(e) for A26(1)(c), or in A27(2)(f), A27(2)(h) or A27(2)(k), and if the person is not described in any other paragraph of A27(2) [A27(4)]. If you have found the person concerned both described and eligible to be referred to the CRDD, make a conditional departure order, and
- consider detention, release and the imposition of terms and conditions [A103(3.1)].

However, if you believe that a person is described in any other paragraph of A27(2):

- write the appropriate report
- forward the new report and the original report and direction for determination to the Deputy Minister's delegate for reconsideration [A27(6)(a)], and
- consider detention or release [A103(1), A103(2)].

6. MAKING ADMINISTRATIVE REMOVAL ORDERS

You are authorized to make administrative removal orders at ports of entry [A23(4), A28] and at inland offices [A27(4), A28]. These provisions allow you to resolve uncomplicated cases of inadmissibility at ports of entry, and uncomplicated infractions of the *Immigration Act* at inland offices.

6.1 Exclusion orders

You can make exclusion orders only in cases involving A20(1) reports, and when the following circumstances exist:

- when you have determined that a person is inadmissible to Canada for one or more of the grounds mentioned in A23(4), but no others
- when you have not allowed a person to leave Canada [A23(4)], and
- when you have not referred a claim to be a Convention refugee to the CRDD [A45(1)]. This circumstance could arise either because no claim was referred to you, or because you received a claim to be a Convention refugee and determined the claimant to be ineligible for referral to the CRDD.

An exclusion order is an effective order. A person who is subject to an exclusion order and who had not claimed to be a Convention refugee must leave Canada. After the person is removed from or otherwise leaves Canada, that person must not come into Canada without the written consent of the Minister during the 12-month period immediately following the day on which the person is removed from or otherwise leaves Canada, unless an appeal from the order has been allowed [A55(2)].

However, the removal of a person who has been determined to be ineligible to have a claim to be a Convention refugee referred to the CRDD is stayed until seven days have elapsed from the time the order was made or becomes effective, whichever is later, unless the subject of the order agrees that removal may be effected before the period expires [A49(1)(e)].

You may encounter two circumstances in which there is no stay and removal is immediate. These are:

- when you make an effective removal order against a person residing or sojourning in the U.S.A. or St. Pierre and Miquelon [for the meaning of "residing or sojourning", see *El Jechi v. Minister of Employment and Immigration*, [1988] 8 Imm. L.R. (2nd) 64, 25 F.T.R. 196 (F.C.T.D.)], and
- when you have determined that a person is not eligible to have a claim referred to the CRDD by reason of A46.01(b), and that person is to be removed to a country with which the Minister has entered into an agreement under A108.1 concerning the sharing of responsibility for examining refugee claims.

6.2 Departure orders

You can make departure orders only in inland cases, and when the following circumstances exist:

- when you are satisfied that a person has contravened the Act on one or more of the grounds mentioned in A27(4), but no others, and
- when you have not referred a claim to be a Convention refugee to the CRDD [A45(1)]. This circumstance could arise either because no claim to be a Convention refugee was referred to you, or because you received a claim to be a Convention refugee and determined the claimant to be ineligible for referral to the CRDD.

A departure order is an effective order.

A person who is the subject of a departure order is to attend or be brought before an IO, so that the officer can verify the person's departure from Canada and issue a certificate of departure [A32.01].

If no certificate of departure is issued within the time specified in section 27 of the *Immigration Regulations*, the departure order is *deemed to be a deportation order* against the person [A32.02(1)].

If a person is no longer in Canada and has not been issued a certificate of departure in accordance with the Act, the person will be *deemed to be deported*, despite the fact that departure from Canada has been effected.

In three circumstances, persons who are subject to departure orders may reapply to come into Canada at any time without the permission of the Minister, providing the requirements of the Act and its regulations are otherwise met. These are:

- a person who has been issued a certificate of departure, and who leaves Canada voluntarily before the expiration of the prescribed period
- a person who is removed from Canada before the expiration of that period [A55(3)], and who has been issued a certificate of departure, and
- a person who has been detained under the Act and is still in detention at the expiration of the period as specified in section 27 of the *Immigration Regulations* [A32.02(3), A55(3)(b)].

6.3 Conditional departure orders

You can make a conditional departure order if you determine a person to be eligible to have a claim referred to the CRDD, and if the person would otherwise have been the subject of an exclusion order at a port of entry or a departure order at an inland office [A28(1)].

6.4 Conditional and effective orders

Exclusion orders, departure orders and deportation orders are effective the day they are made unless, in the case of departure orders and deportation orders, they are conditional orders.

Under A28(2) and A32.1(6), conditional orders only become effective when:

- the claimant withdraws his or her refugee claim
- you have found the claimant not to be eligible to make a refugee claim, and you have so notified the claimant
- the CRDD has declared the claim to have been abandoned and the claimant has been so notified
- the CRDD has determined that the claimant is not a Convention refugee and the claimant has been so notified, or
- you have determined [A46.07(1.1)] or an adjudicator has determined [A46.07(2)] that the claimant does not to have a right under A4(2) to remain in Canada [A28(2), A32.1(6)].

A2(4) provides methods for determining when a person has been notified of a decision made under the Act.

Persons are *deemed to be notified* of a decision (other than a decision of a visa officer) under the Act, if:

- the decision was not given in the presence of the person and the person was not entitled to written reasons, on the day that is 7 days after the day on which notice of the decision was sent to the person, and
- the person was entitled to written reasons, or was entitled to request written reasons and did so, on the day that is 7 days after the written reasons were sent to the person.

Notices or written reasons may be sent by mail.

6.5 Completing orders

Remember that any removal order that you make may be the subject of judicial review by the Federal Court of Canada. It is important that you complete these documents fully and accurately.

Removal orders will normally be generated by *full document* entry in FOSS. If FOSS is temporarily unavailable, follow these procedures:

- complete the Exclusion Order (form IMM 1214) or the Departure Order and Conditional Departure Order (form IMM 5238) by typewriter wherever possible
- ensure that the subject's name is spelled correctly
- complete the subject's date of birth in the format indicated on the form
- insert the applicable country name in the *country of birth* and *country of citizenship* fields. Do *not* use country codes.
- use the allegation wording found in Immigration FOSS III - Removal Cause to complete the allegation section in the order
- check off the box on the IMM 5238 indicating whether it is a departure order or a conditional departure order
- sign and date the document
- ensure that the order is interpreted and the interpreter declaration completed and signed, if appropriate

- ask the subject of the order, if present, to sign and date the order indicating receipt of a copy. If the subject refuses to sign, make the notation *refused to sign* in the space reserved for the subject's signature.
- complete the *date delivered* and *delivered by* (mail or in person) fields in all cases. If the subject of the order is present and receives a copy of the order, the *date delivered* is the effective date of the exclusion or departure order. If the subject of the order is not present, the *date delivered* is the date the order is mailed and will always be the same as or later than the *date signed*. Remember that the subject of the order is deemed to have been notified of the order 7 days after the decision is mailed [A2(4)].
- or the IMM 5238, complete copy 3, boxes 200 and 227
- for the IMM 1214, complete copy 3, boxes 200, 227, 229, 230 and 231, where appropriate
- distribute the form as follows:
  - for **exclusion** orders, distribute as indicated on the form, and send copy 3 to National Headquarters immediately for microfilming
  - for **departure** orders, give copy 2 to the client, send copy 3 to National Headquarters for microfilming, and send copy 5 to counsel, if available. Retain the other copies on file.
  - for **conditional departure** orders, give copy 2 to the client and copy 5 to counsel, if available. Retain the other copies on file.
- when the conditional departure order becomes effective, complete the bottom portion of copy 3 and send it to National Headquarters for microfilming.

6.6 Appeals to the IAD

When you make a removal order against a person who has a right to appeal your decision to the IAD, you will advise the person of that right. In most cases, removal orders are stayed, at the request of persons who have a right of appeal to the IAD, until the time provided to file that appeal has lapsed (30 days) [A49(1)(a)]. If the person concerned files an appeal, the IAD would normally continue the stay of a person's removal order until the disposition of the appeal.

A removal order will not be stayed for a person who is the subject of a report under A20(1) and who has come to Canada from contiguous territory: that is, from the United States or St. Pierre and Miquelon [A49(1.1)(a)].

You should advise the person that:

- entering an appeal will not prevent removal, but he or she has a right to apply to the IAD for authorization to return for the hearing [A49(1.1)(a), A56(1) and A75]
- to exercise this right, the person should inform the IAD in writing [*IAD Rules*, rule 34]
- the IAD may allow the person to return to Canada, with or without terms and conditions, or may refuse to allow the person to return [A75], and

- A75 allows the person's return only for the appeal hearing, if he or she intends to appear in person before the IAD, and provides that expenses will be the responsibility of the individual.

You should obtain a written acknowledgement from the person that he or she has been advised of a right to appeal to the IAD and place it on your file.

7. YOUR DETENTION AND RELEASE AUTHORITY

7.1 Detention

The *Immigration Act*, as amended, introduces provisions under which you can adjourn an examination of a person who is the subject of a report, detain or release the person with or without terms and conditions, or impose terms and conditions on the person [A23(3), A23(6), A103(3.1)].

Your authority to detain for inquiry is found in A23(3)(a). Your authority to detain after making a removal order is found in A103(3.1)(b). If you wish to impose terms and conditions or require the posting of a bond or security deposit, your authority is found in A103(3.1)(c).

Generally, the legislation provides that where a person is detained for examination, inquiry or removal and the examination, inquiry or removal does not take place within 48 hours after detention, the person shall be brought before an adjudicator for a review of the reasons for continued detention.

Thereafter, a detention review by an adjudicator shall take place at least once during the 7 days immediately following the expiration of the 48-hour period and at least once during each 30-day period following each previous review [A103(6)].

The Act provides two main tests that you will use to reach decisions concerning detention and release.

You use *reasonable grounds* as the test in A103(1) for issuing a warrant for arrest and detention, in A103(2) for an arrest and detention without warrant, and in A23(6) for detention and release of persons.

Reasonable grounds are a state of facts and circumstances that would satisfy an ordinary cautious and prudent person and that is more than mere suspicion. There must be some objective basis for your belief.

Likely to pose a danger and *unlikely to appear* are the tests you apply when you consider the detention of a person after you have made an administrative removal order [A103(3.1)]. These tests are slightly more onerous than that of "reasonable grounds". When you are considering detention or release under A103(3.1), you must consider whether detention or continued detention is appropriate on *the balance of probabilities*.

7.2 Release

You can release from detention, within 48 hours of initial detention, any person who has been detained for examination, determination or inquiry [A103(5)]. You cannot exercise this authority if initial detention has continued for more than 48 hours.

When you review detention under A103(5), complete a Release Hearing (form IMM 1439) to document what took place at the detention review.

You may release on terms and conditions that you consider appropriate, including the payment of a security deposit or the posting of a performance bond. Consider what conditions of release may be acceptable.

Where you have concerns about the unavailability of the detainee, consider releasing or seeking the release of the detainee to an individual guarantor who comes forward on the person's behalf.

You must be satisfied that a guarantor is able to exercise such control over the movements of the person released from detention that the person will report for the continuation of immigration proceedings as required. You must also assess the reliability of the proposed guarantor. For example, if a proposed guarantor had defaulted on a previous performance bond, you might feel less inclined to release the person concerned released without requiring a cash deposit.

If you do not release the person and an examination, determination, inquiry or removal does not take place within 48 hours, you must cause a detainee to be brought before an adjudicator as soon as practicable so that detention may be reviewed [A103(6)].

Should detention be continued, the person must be brought before an adjudicator at least once in the 7 days immediately following the expiration of the 48-hour period and thereafter at least once each 30-day period following each previous review [A103(6)].

When you must cause a detention review by an adjudicator, complete a Request for an Inquiry/Detention Review Pursuant to the Adjudication Rules (form IMM 5245) each and every time a detention review is necessary [*Adjudication Division Rules,* rule 28].

7.3 Reviews of A103.1(1)(a) cases (identity)

In cases where persons are detained for lack of identity, you will review the information provided and any other relevant information as soon as practicable after the IO has made a decision to detain. You may, if warranted, continue the detention for a period not exceeding 7 days from the initial detention, to attempt to establish identity.

Requests from counsel to attend reviews are to be allowed in accordance with section 8.2 below.

A person who cannot corroborate his or her identity by providing the usual documentary evidence contemplated by section 14 of the *Immigration Regulations* will normally be detained if it can be established that the person had a document before embarking for Canada, unless the person can give a credible account of his or her identity. A credible account of identity in the absence of documents described in section 14 of the *Immigration Regulations* might include:

- testimony from relatives or friends who are in Canada
- identity documents or other reliable official documents other than those described in R14

When the detainee has not provided satisfactory evidence of identity, you may wish to consider release if the detainee does not present a security risk, or if mitigating circumstances outweigh the doubts about identity. Such mitigating circumstances might be:

- the age and health of the detainee
- the presence of relatives in Canada
- accompanying dependants
- the overall credibility of the detainee as established through examination, and
- whether the necessary documents were accidentally forgotten, lost or stolen.

Following your review of detention under A103.1(1)(a), if the detainee's identity and background is satisfactorily established, you must bring the person before an adjudicator [A103.1(12)].

8. OTHER PROCEDURES

8.1 Counsel

For the purpose of an immigration examination, a person is not entitled to counsel unless formally detained [see *Dehghani v. Minister of Employment and Immigration*, SCC, File No. 22153, March 25, 1993].

Since a person awaiting examination by an IO or by an SIO is not considered to be detained, the right to retain and instruct counsel does not arise.

Despite not being entitled to counsel, persons may be allowed the assistance of counsel before an SIO, as long as the person acting as counsel is ready and able to proceed immediately. Counsel may include a lawyer, a consultant, a family member, and a friend.

Persons who are detained must be given full reasons for their detention, be informed without delay of their right to retain and instruct counsel for the purpose of review of detention and be given a reasonable opportunity to exercise that right.

A reasonable opportunity would include, for example, providing access to a telephone and telephone directory (with an interpreter, if needed), and informing the individual of the possibility of applying for such legal aid as may be available in the applicable province.

You must respect the strict time frames for detention review. If counsel for detention review is not yet retained or cannot be present within the prescribed period of time, the detention review must proceed in the absence of counsel.

8.2 Adjournment

Adjournment of your determination will rarely be necessary. *In exceptional circumstances*, you may have to consider a request for adjournment to ensure persons a reasonable opportunity to provide more evidence. You may have to initiate adjournment for operational reasons, such as the lack of an interpreter. Do not use adjournment as a tool of administrative convenience.

You should not consider a request for adjournment to furnish additional information unless all of the following conditions are met:

- there are strong indications that the person *can easily produce* additional documents relevant to the report or eligibility determination
- you find the person's indications to be credible, and
- the person has not yet been given a reasonable chance to present such documents.

You should keep in mind A23(3), which provides authority to detain, release and impose terms and conditions, including the imposition of a security deposit or the posting of a performance bond, on the adjournment of an examination of a person who is the subject of a report made under A20(1)(a).

8.3 Unaccompanied minors and incompetents

The duty of fairness precludes your processing minors and others incapable of properly representing themselves without some capable person representing their interests. In any case involving an unaccompanied minor or a suspected incompetent person, you must arrange for proper representation as soon as practicable in accordance with local or regional guidelines.

8.4 Included dependants

An adjudicator at inquiry may include dependant children in a removal order [A33(1)]. The Act contains no similar authority allowing an SIO making an exclusion order [A23(4)], a departure order [A27(4)] or a conditional departure order [A28(1)] to include dependant children in these orders. Since the Act provides that the order be made against the person about whom you have received a report, you cannot include dependants in an administrative order. Each dependant must be the subject of an individual report.

8.5 Charter arguments

You may occasionally be asked in the course of determining the validity of an allegation or the eligibility of a claim to rule on the constitutionality of certain provisions of the *Immigration Act*. You may also be asked to delay eligibility or admission procedures so that the person concerned may make an application to the Court on the constitutionality of a provision of the *Immigration Act*.

Your jurisdiction under the *Immigration Act* is limited, and involves applying the Act in an administrative setting. You do not have jurisdiction to hear and decide *Charter* issues under the *Constitution Act*, nor can you grant remedies sought under the *Charter* [*Constitution Act*, sections 24, 52].

Your decision on eligibility or admissibility can be reviewed by the Federal Court upon successful application by the person concerned. The Court is the proper venue for an application of relief under the *Charter*. Do not permit a delay of eligibility or admissibility procedures for the purpose of a Court application.

8.6 Your obligations under the *Immigration Appeal Division Rules*

You will encounter three circumstances where a person against whom you have made a removal order has a right of appeal to the Immigration Appeal Division. These are:

- a person who is in possession of a valid immigrant visa at the time the A20(1) report was made, in the case of a person who is seeking landing [A70(2)(b)]
- a person who is in possession of a valid visitor visa at the time the A20(1) report was made, in the case of a person who is seeking entry [A70(2)(b)], and
- a person who has previously been found to be a Convention refugee under the Act or its regulations but is not a permanent resident of Canada [A70(2)(a)].

Such persons have a right to appeal your decision to the Immigration Appeal Division.

An appeal of your decision will begin when an SIO is served with a notice of appeal. Do not accept service of a notice of appeal against a removal order made by an adjudicator.

When you are served with a notice of appeal, retain a copy for your file and immediately file the notice in the appropriate IRB registry [*IAD Rules*, rule 6(3)].

Advise your regional appeals office that you have been served with a notice of appeal and forward a copy of the notice by facsimile.

You must then serve all parties with a certified true copy of the record, which consists of:

- a certified true copy of the order
- a copy of any report and direction or any statement of arrest concerning the appellant
- any reasons you have given for your decision, and
- a table of contents.

You must serve documents in accordance with rule 35(1) of the *IAD Rules*.

You will file three certified copies of the record at the appropriate IRB registry, retain one copy for your file, and forward a copy of the appeal record to your regional appeals office as quickly as possible.

8.7 Judicial review

Your decisions are subject to judicial review, with leave, by the Federal Court–Trial Division. A review is commenced when an application for leave is filed with the court. Under the *Federal Court Immigration Rules, 1993*, "tribunal" is defined as the person or body whose decision, order, act or omission is the subject of an application. This means that you are considered to be a tribunal by the Federal Court and you are placed under certain obligations to provide information to the court.

If you are presented with proof that an application for judicial review has been filed with the Federal Court concerning an order or decision you made, send a copy of the application to the regional officer responsible for Federal Court litigation.

When applications for leave are filed, the court may ask you to provide certain documents to the court registry and to the parties under rules 9, 14 and 17 of the *Federal Court Immigration Rules, 1993*.

You should follow your region's standard procedures to comply with whatever order the court may make for producing documents. If you need assistance to comply with an order, contact your regional litigation co-ordinator. You are likely to encounter three kinds of requests from the Federal Court.

1. **Requests under rule 9**

   If a person indicates in an application for leave that the reasons for the decision which is to be challenged have not been received, the court will order that they be provided, if they exist.

On receiving an order, you are required to send a copy of the decision or order, and written reasons for it, certified by an appropriate officer to be a true copy, to each of the parties, and two copies to the court registry.

If you did not give reasons for the decision or order or you gave reasons but did not record them, you must send an appropriate written notice to all the parties and the registry.

2. **Requests under rule 14**

You may be ordered by a judge to produce and file any additional documents that a judge may feel are necessary to dispose of the leave application before the court. The order will specify the material to be provided and you must provide it without delay. Send a copy of the material, certified by an appropriate officer to be a true copy, to each of the parties, and two copies to the court registry.

3. **Requests under rule 17**

When the court grants an application for leave, you will be served with a copy of the order granting leave immediately after the order is made. The order will require that you prepare and forward a record of the proceedings to the court and to the parties to the application. The record will consist of the following:

- the decision or order in respect of which the application is made and the written reasons you gave, if any
- all papers relevant to the matter that are in your possession
- any affidavits, or other such documents, filed during the hearing process, and
- a transcript, if any, of any oral testimony given during the hearing, that gave rise to the decision or order which is the subject of the application

You must prepare a record in accordance with these guidelines. Since your proceedings are not a matter of record, you need not enclose a transcript in the record.

You, or the officer designated to fulfil this function, will send a certified true copy of this record to each of the parties and two copies to the Federal Court registry [*Federal Court Immigration Rules, 1993*, rule 17]. Any questions concerning the materials to be sent to the court should be directed to the designated regional officer responsible for litigation.

8.8 Admissibility on humanitarian and compassionate grounds

The requirement that persons apply for and obtain immigrant visas outside Canada remains basic to the *Immigration Act* [A9(1)]. Circumstances may exist, however, where the requirement to apply for a visa from outside Canada may cause undue hardship for the applicant. A114(2) enables the Minister to assist the admission of persons on compassionate or humanitarian grounds.

The courts have confirmed that IOs are under a duty to consider requests for an exemption under A114(2) from the visa requirement of A9(1) on compassionate or humanitarian grounds [*Minister of Employment and Immigration v. Jiminez-Perez*, [1985] 1 W.W.R. 577 (S.C.C.)]. The proper exercise of discretion under A114(2) is consistent with the Act's objective of upholding Canada's humanitarian tradition.

8.9 Claims to Canadian citizenship

Canadian citizens have a right to come into Canada [A4(1)], and cannot be removed from Canada. The burden of proof regarding Canadian citizenship is on the person claiming it.

In the course of reviewing a report, if you receive a claim that a person who is the subject of a report is a Canadian citizen, you should cause an investigation of this matter before issuing an administrative removal order or referring the matter to an adjudicator for inquiry. Chapter EC 2 (sections 5 and 6 and Appendix C) includes further information on investigating citizenship.

8.10 Claims to permanent residence

A permanent resident is a person who has been granted landing, who has not become a Canadian citizen, and who has not ceased to be a permanent resident under A24 or A25.1 [A2(1)]. The definition includes a person who has become a Canadian citizen but has ceased to be such by virtue of subsection 10(1) of the *Citizenship Act*, without reference to subsection 10(2) of that Act.

These provisions will be introduced in 1994 by separate proclamation of the Governor in Council. Until then, returning-resident permits will continue to be issued in Canada and abroad with current criteria for establishing, retaining and abandoning permanent residence.

Persons who are permanent residents have the right to come into or to remain in Canada under A4, unless it is established at inquiry that they are described in A27(1).

You should write reports about persons whom you believe may no longer be permanent residents of Canada by using A19(2)(d) for A9(1) and A24, thus ensuring that such persons are sent to an inquiry.

APPENDIX A
COUNTRIES PRESCRIBED UNDER A114(1)(s)
[RESERVED]

APPENDIX B
REQUESTING THE MINISTER'S OPINION UNDER A46.01(1)(e)(i) AND A46.01(1)(e)(ii)

1. REQUESTING THE MINISTER'S OPINION

The purpose of A46.01(1)(e)(i) and A46.01(1)(e)(ii) is to exclude persons from the refugee determination process to whom Canada does not have any legal obligation under the Convention.

1.1 Danger to the public [A46.01(1)(e)(i)]

The fact that the Minister's opinion is required to exclude persons convicted of serious crimes from our refugee determination system recognizes that not all persons convicted of crimes necessarily pose a danger to the public. For example, the offence may have taken place a long time ago. You need to assess whether the person is currently a danger to the public.

Your assessment should be based on observing the person's behaviour during immigration proceedings, and on information from medical or police sources which indicates that the individual currently poses a danger to the public. Whether the person concerned has demonstrated that he or she is rehabilitated is an essential fact for you to consider before seeking a Minister's opinion.

For you to make a reasonable and convincing argument that a person is a danger to the public in Canada [A46.01(1)(e)(i)], that person should, ideally, be detained or in jail. At the very least, the case presenting officer (CPO) should be seeking to detain or continue to detain the person on the grounds that he or she is a danger to the public. If the CPO is unsuccessful in obtaining an order to detain at the beginning of the inquiry, the CPO should request detention at the time that the opinion is received.

1.2 Contrary to the public interest [A46.01(1)(e)(ii)]

In most cases involving public interest [A46.01(1)(e)(ii)], you will be applying for an A40.1 certificate as evidence that the person is described as alleged. The evidence required to support an application for an A40.1 certificate should be sufficient to meet the requirements for a Minister's opinion that it is not in the public interest to have the refugee claim determined in Canada. Thus you should seek the Minister's opinion at the same time as you request an A40(1) or A40.1 certificate.

2. EVIDENCE REQUIRED TO SEEK THE MINISTER'S OPINION

2.1 Danger to the public [A46.01(1)(e)(i)]

For cases where you and your supervisor believe that it is appropriate to seek the Minister's opinion under A46.01(1)(e)(i), you should prepare a memorandum for your manager's signature, addressed to the Chief of the relevant bureau of the Case Management Branch, National Headquarters, with a copy to the appropriate regional official.

The memorandum should outline all pertinent information and include copies of all supporting documents. The supporting evidence should include, as appropriate:

- a conviction certificate
- warrant of committal
- reasons for conviction or sentence to confirm a conviction
- records of mental illness
- Health and Welfare medical reports
- psychiatric evaluations or certificates
- police reports, and
- any data concerning incidents of physical violence showing that the person could be a danger to the public.

The information on the person's convictions or violent acts should consist of the best evidence possible. Direct evidence is preferable, including statutory declarations by witnesses of the person's acts, and official documentation such as police or prison occurrence reports and transcripts of the trial and sentencing hearings. The accuracy or sufficiency of the evidence may be challenged in legal proceedings, and so the evidence should be able to sustain judicial review.

2.2 Contrary to the public interest [A46.01(1)(e)(ii)]

In most cases requiring the Minister's opinion on whether or not it is in the public interest to hear the claim, you will be dealing with the Security Review Section of the Case Management Branch, National Headquarters, to obtain an A40 or A40.1 certificate. Your memorandum of request for an A40 or A40.1 certificate should include a request for a Minister's opinion under A46.01(1)(e)(ii), because the evidence for a certificate may be applicable to a request for a Minister's opinion.

Promptness is essential, especially in port-of-entry and detained cases. Send memoranda of request and supporting evidence urgently by facsimile.

3. NOTICE TO THE PERSON CONCERNED

The decision-making process whereby a Minister's opinion is made and issued to the person must adhere to the basic principles of procedural fairness. The duties of procedural fairness oblige the manager to advise the person of the information which is before the decision-maker and to give the person an opportunity to rebut such information. As soon as your manager has decided to seek a Minister's opinion, you should notify the person concerned in writing.

The notification should:

- outline in detail the information upon which the opinion is being sought
- advise that the person has 15 calendar days to forward written representations to the manager for the Minister's consideration. The 15-day period does not include the day of service but includes the fifteenth day; where the last or fifteenth day falls on a holiday, the last day is deemed to be the next working day, and
- explain the consequences should an opinion be made.

Section 6 below gives suggested wording for these requirements.

4. EXTENSION OF TIME

Your manager will deal with extensions of the 15-day period on a case-by-case basis. In exceptional circumstances only, the CIC manager may, after consultation with the Case Management Branch, extend the time allowed.

5. SERVICE OF NOTICE

Service of the notice on the person concerned shall be by personal service: that is, hand to hand by an IO with a signed acknowledgement of receipt, or by bailiff. The notice is effective immediately upon service.

6. SUGGESTED WORDING FOR THE NOTICE TO THE PERSON CONCERNED

To: *full name of person*

Take notice that the Minister of Employment and Immigration ("the Minister") is or will be considering whether you are a person who constitutes a danger to the public for the purpose of excluding you from the refugee determination process as described in subparagraph 46.01(1)(e)(i) of the Immigration Act, in that

whichever is appropriate:

you are a person described in paragraph 19(1)(c) of the Immigration Act.

or

you are a person who has been convicted in Canada of an offence that may be punishable under any Act of Parliament by a maximum term of imprisonment of ten years or more.

or

you are a person described in paragraph 19(1)(c.1)(i) of the Immigration Act.

or

you are a person who there are reasonable grounds to believe has been convicted outside Canada of an offence that, if committed in Canada, would constitute an offence that may be punishable under an Act of Parliament by a maximum term of imprisonment of ten years or more.

This consideration is based on your conviction for the following offence:

You have been convicted under *name of statute or Act of Parliament, as appropriate* on *date* in *place of conviction* of *offence*, in that you *particulars of offence*.

whichever is applicable:

This is an offence for which a maximum term of imprisonment of number years may be imposed.

or

This is an offence which could constitute, in Canada, an offence that may be punishable under section and name of the Act of Parliament and for which a maximum term of imprisonment of number years or may be imposed.

Based on your conviction and on *list details of all other information pertinent to the determination that a person constitutes a danger to the public in Canada*, the Minister may be of the opinion that you constitute a danger to the public in Canada.

Be advised that you, or your counsel on your behalf, have 15 days from *give date on which service will be effected* to make written representations to the Minister at *give CIC address*. You may wish to comment on the accuracy and correctness of the information on the basis of which an opinion under subparagraph 46.01(1)(e)(i) of the Immigration Act is sought, or any other information relevant to the issue.

Your representations, if any, will be given due consideration by the Minister in determining whether or not you constitute a danger to the public and should be excluded from the refugee determination process.

Should no representations be made to the Minister on your behalf within the 15-day period, a decision will be made on this matter without further notice.

A person who constitutes a danger to the public in Canada in the opinion of the Minister, pursuant to subparagraph 46.01(1)(e)(i) of the Immigration Act, is not eligible to have his or her claim to refugee status determined by the Convention Refugee Determination Division.

Dated this *number* day of *month*, *year*, in the city of *name*, province of *name*.

signature

_____

Manager

7. FORWARDING REPRESENTATIONS

On receiving written representations from the person concerned, the manager should send a copy by facsimile to the Chief of the appropriate geographic bureau, Case Management Branch, National Headquarters.

IMMIGRATION

Canada

Chapter EC 5
IAD Appeals and CRDD Refugee Determination Hearings





Employment and Immigration Canada

Emploi et Immigration Canada

IAD Appeals and CRDD Refugee Determination Hearings

Abbreviations and Short Forms	
Act	*Immigration Act*, as amended
Board	Immigration and Refugee Board
CIC	Canada Immigration Centre
CPO	Case Presenting Officer
Commission	Canada Employment and Immigration Commission
Convention	United Nations 1951 *Convention Relating to the Status of Refugees* and 1967 *Protocol Relating to the Status of Refugees*
CRDD	Convention Refugee Determination Division of the Immigration and Refugee Board
FOSS	Field Operational Support System
IAD	Immigration Appeal Division of the Immigration and Refugee Board
IO	Immigration Officer
IRB	Immigration and Refugee Board
Minister	Minister of Employment and Immigration
PIF	Personal Information Form
RHO	Refugee Hearing Officer
SIO	Senior Immigration Officer

1. INTRODUCTION 1
1.1 What this chapter is about 1
1.2 Policy intent 1

2. INFORMATION FOR PERSONS CONCERNED 2

3. GENERAL PROCEDURES 3
3.1 The Appeals Section, National Headquarters 3
3.2 The Department of Justice 3
3.3 Communicating with the IRB 3
3.4 Calculating time limits 4
3.5 Location of appeals offices 4
3.6 Location of IRB registries 4

PART I HEARINGS BEFORE THE IMMIGRATION APPEAL DIVISION 5

4. INITIAL PROCEDURES 5
4.1 The appeals officer's role 5
4.2 Roles of the CIC and visa office 5

5. APPEALS AGAINST REMOVAL 7
5.1 Notice of right to appeal 7
5.2 Notice of appeal 7
5.3 Action before the appeal hearing 8
5.4 Appeals office action before and after the appeal hearing 8
5.5 Implementing the IAD's decision 9

6. SPONSORSHIP APPEALS 10
6.1 Appeals office action before the appeal hearing 10
6.2 Appeals office action after the appeal hearing 11

7. THE MINISTER'S APPEAL RIGHTS 12

8. DISPUTED APPEAL RIGHTS IN SPONSORSHIP CASES 13

9. LATE-FILED APPEALS 14

10. WITHDRAWAL OF APPEALS 15

11. APPLICATIONS AND MOTIONS 16

12. APPLICATIONS TO RETURN FOR A HEARING AFTER REMOVAL OR DEPARTURE 18
12.1 Notice to the person 18
12.2 Appeals office action 18

13. RETURN TO CANADA FOR OTHER PURPOSES WHILE AN APPEAL IS PENDING 19

14. RETURN DURING A STAY OF EXECUTION ORDERED BY THE IAD 20

15. REOPENING AN INQUIRY BY DIRECTION OF THE IAD 21

16. POST-HEARING REPORTS 22

17. NOTATIONS ON DOCUMENTATION 23

PART II HEARINGS BEFORE THE CONVENTION REFUGEE DETERMINATION DIVISION 24

18. THE MINISTER'S ROLE AT CRDD HEARINGS 24
18.1 The Minister's right to appear before the CRDD 24
18.2 The Minister's representative 24
18.3 Providing the PIF to the Minister 24
18.4 Cases warranting the Minister's intervention 25
18.5 Notice 25
18.6 Expert witnesses 25
18.7 Preliminary conference 25
18.8 Conference 26
18.9 Public hearings 26

19. EXCLUSION 27
19.1 Appeals office action before a CRDD hearing 27
19.2 Appeals office action during and after a CRDD hearing 27

20. APPLICATIONS FOR CESSATION OF CONVENTION REFUGEE STATUS ... 28
20.1 Appeals office action before a CRDD hearing 28
20.2 Appeals office action after a CRDD decision 28

21. RECONSIDERATION HEARINGS 30
21.1 Appeals office action before a CRDD decision 30
21.2 Appeals office action after a CRDD decision 31

22. WITHDRAWAL OF A CRDD APPLICATION 32

23. ABANDONMENT OF REFUGEE CLAIMS AND APPLICATIONS FOR CESSATION AND RECONSIDERATION 33

APPENDIX A
ADDRESSES OF APPEALS OFFICES 35

APPENDIX B
ADDRESSES OF IRB OFFICES 37

APPENDIX C
OVERVIEW OF THE IMMIGRATION APPEAL DIVISION 39

1. Jurisdiction 39
2. Format 39
3. Evidence 39
4. Decisions 39
5. Reasons 39
6. Roles 39
   - 6.1 The Minister's representative 39
   - 6.2 Appeals Section, National Headquarters 40

APPENDIX D
PERSONS WHO MAY APPEAL AGAINST REMOVAL 41

1. Permanent residents and returning residents 41
2. Visa holders 41
3. Convention refugees 41
4. Exceptions 41
5. Reopening appeals 41

APPENDIX E
STAYS 43

1. Stays of removal where proceedings before the IAD are pending 43
2. No statutory stays in certain cases 43

APPENDIX F
APPEAL PROVISIONS FOR FAMILY-CLASS REFUSALS 45

1. Sponsors residing in provinces under A108 agreements 45
2. Grounds for appeal 45
3. Disputed appeal rights 45
4. Protection of confidential information used by a visa officer in assessing applications for permanent residence 45

APPENDIX G
NOTICE OF WITHDRAWAL OF APPEAL 47

APPENDIX H
SAMPLE SUBMISSION ON TERMS AND CONDITIONS FOR RETURN UNDER A75 49

APPENDIX I
OVERVIEW OF THE CONVENTION REFUGEE DETERMINATION DIVISION ... 51

1. Structure 51
2. Jurisdiction 51
3. Intervention of the Minister 52
4. Participants in hearings 52
5. Guides to the interpretation of Convention refugee provisions 52
6. Confidentiality of hearings 52
7. Communication of the CRDD decision 53

8. Cessation 53

APPENDIX J
EXCLUSION CLAUSES 55

1. Section E 55
2. Section F 55

APPENDIX K
APPLICATIONS FOR CESSATION OF CONVENTION REFUGEE STATUS 57

1. Grounds 57
2. Hearings 57

APPENDIX L
RECONSIDERATION HEARINGS 59

1. Grounds 59
2. Applications 59
3. Hearings 59

1. INTRODUCTION

1.1 What this chapter is about

This chapter describes the responsibilities of an appeals officer at hearings of the Immigration Appeal Division and the Convention Refugee Determination Division of the Immigration and Refugee Board.

The Immigration Appeal Division (IAD) is an administrative tribunal that provides an independent review of decisions made under the immigration program; the IAD examines cases before it for possible errors, and has the authority to reverse valid decisions on equitable grounds. The Convention Refugee Determination Division (CRDD) is an independent tribunal with exclusive jurisdiction to make determinations on refugee claims that have been referred to it by a senior immigration officer (SIO). Each of these tribunals is completely independent of the Canada Employment and Immigration Commission and the Minister.

As the appeals officer at a hearing before the IAD, you present the case on behalf of the Minister, who is party to all appeals filed with that tribunal. PART I of this chapter describes the procedures you follow for IAD hearings.

Although a Minister's representative is not normally present at determination hearings before the CRDD, the Minister has a right to send a representative. Appeals officers represent the Minister in these cases. They can present evidence at the hearing and, under certain circumstances, question the claimant and witnesses and make representations. PART II of this chapter describes the procedures you follow for CRDD hearings.

1.2 Policy intent

The *Immigration Act* and its regulations and rules:

- ensure that persons ordered removed from Canada after an immigration inquiry have had the benefit of a full hearing on the allegations against them. The Act recognizes an additional commitment to permanent residents, visa holders and Convention refugees by allowing them to appeal removal orders and conditional removal orders to the IAD, not only on the basis of legal and factual questions relating to the allegations at the inquiry, but also on the basis that special consideration may be warranted.
- ensure that the reunion in Canada of Canadians and permanent residents with their close relatives from abroad is facilitated by providing a review, by way of appeal, of refusals of sponsored applications for permanent residence from members of the family class.
- provide for the determination of most refugee claims in a non-adversarial fashion at hearings of the CRDD, by allowing the presentation of evidence in an atmosphere which takes into account the fears that may exist for persons fleeing persecution.

2. INFORMATION FOR PERSONS CONCERNED

If an appeal from a removal order or a conditional removal order lies to the IAD [A70], the adjudicator or SIO issuing the order will explain the right to appeal to the person concerned and provide the person with the appropriate form. Where applicable, the person concerned will also be advised of the right to apply to the IAD to return to Canada for the appeal hearing [A75].

In an appeal from a refusal of a sponsored application for permanent residence lies to the IAD [A77], the CIC will inform the sponsor in writing of the refusal, the reasons for the refusal, and information about the sponsor's right of appeal to the IAD. The CIC will provide the sponsor with a blank Notice of Appeal (form IMM 5092).

3. GENERAL PROCEDURES

3.1 The Appeals Section, National Headquarters

The Chief of the Appeals Section at National Headquarters is responsible for coordinating the appeals function, directing appeals officers in IAD and CRDD matters, and communicating the Commission's position to the Department of Justice. Instructions on cases may occasionally originate in other National Headquarters sections, but to avoid confusion these instructions will, whenever possible, be routed through the Appeals Section.

CICs should channel feedback for National Headquarters, and requests for information or assistance about the appeal or litigation processes in general or individual cases, through the Regional Headquarters. If the required information concerns activity before the IRB, CICs should contact the local appeals office. The appeals office should approach the Chief of the Appeals Section at National Headquarters directly with these requests.

3.2 The Department of Justice

The Commission's Legal Services must be the primary source of legal advice to the Commission, to ensure uniform advice and to keep senior officials of the Commission informed of new or unexpected issues. Sometimes the need for incidental legal advice in particular cases arises in the field, when regional officials may seek advice from the local office of the Department of Justice. If significant or sensitive legal or policy issues are involved, however, officials should seek legal opinions from Legal Services by channelling requests for opinions through the Chief, Appeals Section, National Headquarters.

In all cases before the IAD and the CRDD, you should seek advice from Legal Services through the Chief, Appeals Section. For appeals before the IAD and in cases before the CRDD involving the Minister, you may discuss legal issues with local Department of Justice lawyers, but seek advice from Legal Services through the Chief, Appeals Section, on significant or particularly contentious issues.

Your office should advise the Chief of the Appeals Section as early as possible of appeals or interventions involving important *Charter* questions or issues having a potentially serious impact on the immigration program and the interpretation of legislation. The Chief will consult Legal Services to decide if assigning a Department of Justice lawyer to the case is warranted.

3.3 Communicating with the IRB

CIC staff must not communicate directly with the IAD, except for the circumstances noted in this section. Channel communications from the CIC to the IRB through the appeals officer assigned to the individual case or through Regional Headquarters. Do not send memoranda or files directly to the IAD, except as noted here.

Officers may send these items directly to the appropriate registry:

- notices of appeal and applications to the IAD served on officers, where the *Immigration Appeal Division Rules* authorize service on officers
- notices of change of address received from appellants before the IAD, and
- notices of withdrawal of appeal to the IAD.

In all communications with the IAD, officers must ensure that the information provided is accurate; do not include any personal comments, observations or opinions, or make any submission. If an officer feels that it is necessary to add information explaining, for example, a delay in service or delivery of documents, send a copy of the covering letter to the applicant and counsel.

If in doubt about whether to send a particular document directly, seek advice from the appeals office.

Appeals officers may quite properly be in frequent communication with refugee hearing officers (RHOs) on cases referred for CRDD hearings.

3.4 Calculating time limits

The *Interpretation Act* governs the calculation of time limits in federal statutes, regulations and rules:

- When a statute refers to a number of days (not "clear days") between two events, *exclude* the day on which the first event happened, and *include* the day on which the second event is to occur [*Interpretation Act*, s. 27(2)].
- When the time limit for the performance of a required action expires or falls on a holiday, the action may be performed on the next work day after the holiday. Sundays are holidays; Saturdays are not [*Interpretation Act*, s. 26].

For example, if there is a 15-day time limit to appeal a decision made on June 2, begin the count on June 3 and end it on June 17. Do not leave out holidays in counting up to the 15th day. June 17 would therefore be the last day to file, unless it was a Sunday, in which case June 18 would be the last day. If June 17 is a Saturday and the office is closed, then the appeal must be filed on June 16.

3.5 Location of appeals offices

Appendix A lists responsible appeals offices by geographic area.

3.6 Location of IRB registries

Appendix B lists responsible IRB registries by geographic area.

PART I HEARINGS BEFORE THE IMMIGRATION APPEAL DIVISION

4. INITIAL PROCEDURES

APPENDIX C includes an overview of the IAD.

4.1 The appeals officer's role

If your position statement of duties requires you to represent the Minister at IAD hearings, in most cases you will be the respondent, taking a position in support of the decision under appeal. You may also appear as the appellant when the Minister files an appeal to challenge an adjudicator's favourable decision [A71].

> *Note: References to the Immigration Act, as amended, appear in the text in this chapter with an "A" prefix followed by the section number, as here: the Act, section 71.*

You present cases and take positions in accordance with instructions provided by the Appeals Section at National Headquarters. These instructions may be specific to an individual case, or in the form of general policy instructions applying to various categories of cases. The Chief of the Appeals Section provides you with functional direction.

4.2 Roles of the CIC and visa office

If you need more information or documentation than is contained in the record, ask the CIC for it. Department of Justice lawyers who are acting as Minister's representatives and who make such requests will generally channel them to the field through your office. Officers who follow up the requests in the field should remember that the required material must reach you or the Department of Justice lawyer well in advance of the hearing, because it must be served on the other party at least 20 days in advance [*IAD Rules*, rule 18(1)].

You may receive new information in the form of a report, with appropriate documentation, from an officer in Canada or overseas who has become aware of new information concerning an appellant, such as marriage, childbirth, hospitalization, criminal conviction, or becoming a public charge. Unless your office advises IOs otherwise, IOs should not approach appellants while appellants' appeals are outstanding to seek adverse information or evidence against them for presentation at their appeal hearing.

Information and documents must be submitted in a form suitable for presentation to the IAD, such as a statutory declaration by the person interviewed (whether or not the person may be called as a witness), or the interviewing officer's own statutory declaration recording the information or identifying documents received. Officers' declarations should contain facts, not opinions or conclusions, and should clearly indicate that the person making the declaration is an immigration officer.

When a CIC forwards information or documents that were obtained from police or similar agencies, the CIC should indicate if there are any restrictions on the release of the information to the IAD. The sources

should have been told that all documents presented to the IAD are also provided to the appellant and counsel, and become part of the public record.

A CIC will notify your office if the CIC transfers the file to another office because of a change in the appellant's address.

5. APPEALS AGAINST REMOVAL

5.1 Notice of right to appeal

If an appeal from a removal order or a conditional removal order lies to the IAD [A70], the adjudicator or SIO issuing the order will explain the right to appeal to the person concerned and provide the person with the appropriate form. Where applicable, the person concerned will also be advised of the right to apply to the IAD to return to Canada for the appeal hearing [A75]. See section 12 below for further information.

5.2 Notice of appeal

A permanent resident, a person lawfully in possession of a valid returning resident permit issued to that person under the regulations, a visa holder, or a person determined under the Act or its regulations to be a Convention refugee may appeal a removal order or conditional removal order to the IAD:

- if the order was made by an adjudicator, that person must file a notice of appeal with a copy of the order at the IRB registry within 30 days after being served with the order [*IAD Rules*, rule 6(1)(a)]
- if the order was made by an SIO, the appellant begins the appeal by serving a notice of appeal with a copy of the order on an SIO within 30 days after being served with the order [*IAD Rules*, rule 6(1)(b)].

One exception exists: a Convention refugee who is not a permanent resident and who received a conditional removal order has 30 days from receiving notice that the order has been confirmed under A46.07(3)(a) to begin the appeal [*IAD Rules*, rule 6(2)].

Appendix D includes further information on persons who may appeal.

Persons seeking to serve a notice of appeal on an IO in a removal case should be advised of the requirements of rule 6 of the *IAD Rules*, which states that such notices must be filed with the IRB registry if the order was made by an adjudicator, or served on an SIO if the order was made by an SIO. Officers should not accept service of notices of appeal if the appeal is from an adjudicator's order. Officers will accept service of a notice of appeal from an order made by an SIO and will immediately forward the notice to the office of the SIO who made the order. An SIO served with a notice of appeal will file it immediately with the IRB registry, and will forward a copy to the regional appeals office.

In the case of appeals from orders made by adjudicators, the adjudicator will prepare the record and serve a certified true copy of the record on your office and the person concerned. In the case of appeals from orders made by SIOs, an SIO or an officer designated by the region is responsible for preparing and serving the record on the appellant, your office and the IAD registry [*IAD Rules*, rule 7].

5.3 Action before the appeal hearing

You will normally become aware of an appeal against a removal order issued by an adjudicator when your office is served with a certified true copy of the record. A record prepared by an adjudicator will consist of certified true copies of the order and the notice of confirmation, if any; the transcript of the proceedings; all documentary evidence filed at the inquiry; any reasons given; and a table of contents [*IAD Rules*, rule 7(a)].

You will become aware of appeals from removal orders issued by SIOs when a copy of the notice of appeal is forwarded to your office by the office on which it was served. The record in these cases will consist of a certified true copy of the order; a copy of any report, direction or statement of arrest regarding the appellant; any reasons provided for the decision; any other relevant information; and a table of contents. A certified true copy of the record must be served on the appellant and three certified true copies of the record must be filed at the IRB registry [*IAD Rules*, rule 7(b)]. Ultimately, as the representative of the Minister at the appeal, it is in your interest to ensure that the record is properly completed and filed with the proper IRB registry.

Before the disposition of the appeal, the local CIC responsible will:

- defer removal, if applicable (see chapter EC 6 for further information on removals)
- ensure that the appellant complies with the conditions of release, if applicable
- inform your office and the IRB registry of any changes in the appellant's address, and
- inform your office of any relevant new developments and additional significant information not evident in the record, such as criminal charges and convictions.

5.4 Appeals office action before and after the appeal hearing

When an appeal or motion (including an application) is filed in the IAD, and when the IAD renders its decision, your office must promptly complete the FOSS *Appeals* or *Motions* screen, as the case may be. This is particularly important when the IAD issues a removal order or conditional removal order. In those cases, complete the appropriate departure order, exclusion order or deportation order by hand.

After the appeal hearing, submit a report to the Chief, Appeals Section, National Headquarters (see section 16 below).

If the IAD allows the appeal and you, in consultation with your supervisor, believe that an application for judicial review may be warranted, you should immediately bring the decision directly to the attention of the Chief, Appeals Section, National Headquarters (see chapter EC 9).

In addition, you should make a written request for written reasons in allowed decisions if the IAD's rationale for the decision is not readily apparent and may affect the processing of future cases, or if it may be necessary to begin proceedings for judicial review of the decision in the Federal Court [*IAD Rules*, rule 29].

When you receive the IAD's decision, ensure that a copy of the decision is sent to the appropriate CIC (if the IAD has not already sent it). If the IAD's decision concerned an A70 appeal from a removal order issued by an SIO, your office should ensure that a copy of the decision and reasons is sent to the Regional Headquarters officer responsible for the supervision of SIOs. Provide any necessary guidance to the CIC about implementing the decision. If the IAD has issued a removal order or conditional removal order, your office must send the CIC's copy of the order to the appropriate CIC.

5.5 Implementing the IAD's decision

If the IAD upholds the removal order and an application for leave to apply for judicial review of the decision is not filed in the Federal Court within the required time, see chapter EC 6 for procedures that the CIC should follow.

If the IAD allows the appeal and quashes the order against a permanent resident, the person's permanent resident status is automatically restored [A24(1)(b)].

If the IAD quashes the order and refers the person for examination [A74(1)(b)], you should pass on relevant information to the CIC, with appropriate guidance.

In directing a stay under A73(1)(c), the IAD may impose terms and conditions, and may review the case from time to time if it considers it advisable to do so [A74(2)].

If the CIC becomes aware of adverse information concerning a person under a stayed order, particularly where it appears that the terms and conditions imposed by the IAD have been violated, the CIC will send a report to your office, with any relevant documents. You should review the evidence and determine, in consultation with your supervisor, if an application to the IAD to have the stay cancelled and the appeal dismissed is warranted. If it is, begin the application.

If the IAD stayed the order, the CIC should send your office a report describing the appellant's activities and current circumstances at least four weeks before the expiry of the period for which the order was stayed, or by whatever earlier date you request. The report must be factual and capable of being substantiated by evidence; it may include appropriate opinions or impressions of the reporting officer that are identified as such. The report should identify any material obtained confidentially and which is not to be released.

Appendix E includes further information on stays.

6. SPONSORSHIP APPEALS

To file an appeal to the IAD under A77, the sponsor must serve a notice of appeal (form IAD2) on an IO, or file it at the IRB registry, within 30 days after being informed of the reasons for the refusal of the application [*IAD Rules*, rule 10].

Because of age, physical or mental condition, or a similar reason, a person may be unable to complete a notice of appeal. In this case the IAD may accept a notice of appeal signed on the person's behalf by a parent or guardian, or by an official of the facility in which the appellant is receiving care or treatment.

Appendix F includes further information about appeal provisions for family-class refusals.

6.1 Appeals office action before the appeal hearing

Immediately after receiving a notice of appeal under A77, an IO at a CIC will:

- file the original at the IRB registry designated by the IAD
- forward a copy of the notice and the complete CIC file to your office, and
- advise the visa office by telex that an appeal has been filed, and request that their file be forwarded immediately to your office.

In sending you their file, the visa office should include a comprehensive résumé of all of the evidence considered and the reasons for refusal, in the form of a statutory declaration [*IAD Rules*, rule 11(3)(d)].

On receiving the notice of appeal and the files, your office should:

- ensure that the FOSS *Appeals* screen is completed promptly; enter any motions or applications associated with the appeal in the FOSS *Motions* screen
- prepare the record, ensuring the documentation is complete (see *IAD Rules*, rule 11(3) for contents), legible, and suitable for presentation to the IAD
- file three certified true copies of the record with the IAD
- serve both the appellant and counsel (if applicable) with a certified true copy of the record, and
- forward a copy of the record to the Chief, Appeals Section, National Headquarters.

You should include your name, title, location and telephone number in the record.

It may appear to you that there is a danger that information obtained in confidence by the visa officer from the government or an institution of a foreign state or from an international organization or agency may be disclosed at the appeal hearing. If so, and if your supervisor concurs, you must send to the Chief, Appeals Section, National

Headquarters a recommendation that the Minister begin an application under A77(3.2) to the Federal Court — Trial Division for non-disclosure of the information to the appellant. Your recommendation should include the confidential information, and set out your rationale for non-disclosure.

6.2 Appeals office action after the appeal hearing

When your office receives the notice of the decision of the IAD, complete the FOSS *Appeals* screen promptly.

If the IAD allows the appeal and you, in consultation with your supervisor, believe that an application for judicial review of the decision is warranted, you should immediately bring the decision directly to the attention of the Chief, Appeals Section, National Headquarters (see chapter EC 9).

If the Minister applies for leave to begin an application for judicial review of the IAD decision allowing a sponsorship appeal, further processing of the application by the visa officer is stayed until the application is disposed of. If leave is granted, it is stayed until the courts have finally disposed of the matter, or until the time limits for filing the application for judicial review or appeal have elapsed [A77(6)].

If the IAD allows the appeal and the Minister does not file an application for leave to apply for judicial review of the decision, return the case to the appropriate visa office for further processing [A77(5)]. You should send a copy of the IAD's reasons to the visa office. Include any new evidence that was established at the hearing. If the Minister consented to the appeal, give the visa office a full explanation of why the Minister consented.

The application will be approved by a visa officer where that officer determines that the sponsor and the applicant meet the requirements of the Act and its regulations other than those on which the decision of the IAD was given. It is possible that additional grounds warranting a second refusal of the application will come to light, although in the first refusal the visa officer should have included every ground applicable to the case.

7. THE MINISTER'S APPEAL RIGHTS

If an adjudicator decides at an inquiry that the person concerned is not a person against whom a removal order or conditional removal order should be made or, in a port of entry case, that the person may be granted admission, the Minister may appeal that decision to the IAD on questions of law and fact [A71].

The decision to appeal an adjudicator's decision to the IAD under A71 is made at National Headquarters by persons with delegated authority from the Minister (see IL 3, Instrument I-9). When the Minister enters an appeal, the Chief of the Appeals Section at National Headquarters will:

- serve a notice of appeal on the respondent within 30 days after the IAD's decision, setting out concisely every ground of appeal [*IAD Rules*, rule 8]
- file a copy of the notice with the IAD registry within five days of service [*IAD Rules*, rule 8]
- send a copy of the material to the appropriate appeals office, and
- advise the CPO supervisor at the CIC where the decision was made.

As soon as reasonably practicable after a notice of appeal has been filed, the adjudicator will prepare and serve the parties with a certified true copy of the record [*IAD Rules*, rule 9].

When the Minister begins an A71 appeal, the Appeals Section, National Headquarters will complete the FOSS *Appeals* screen. If the Minister or the respondent begins a motion or application, you are responsible for completing the *Motions* screen.

The IAD may dismiss the appeal, or allow the appeal and make the removal order or conditional removal order that the adjudicator should have made. In the latter case, if the person concerned would have had an appeal to the IAD under the Act if the order had been made by an adjudicator, he or she is deemed to have made an appeal to the IAD on the basis that all the circumstances of the case warrant special consideration [A73(3)].

After the IAD gives its decision, promptly update the FOSS *Appeals* or *Motions* screen, as the case may be. This is particularly important when the IAD issues a removal order or a conditional removal order. In those cases, complete the appropriate removal order by hand, and forward the CIC's copy of the order to the appropriate CIC.

If the IAD dismisses the Minister's appeal and you, in consultation with your supervisor, believe that an application for judicial review of the decision is warranted, you should immediately bring the decision directly to the attention of the Chief, Appeals Section, National Headquarters (see chapter EC 9).

In addition, you should make a written request for written reasons in dismissed appeals [*IAD Rules*, rule 29].

8. DISPUTED APPEAL RIGHTS IN SPONSORSHIP CASES

An IO will provide persons with notice-of-appeal forms on request even if the IO believes that they clearly have no right of appeal. Where there is no apparent right of appeal but the person insists on serving a notice of appeal, officers will:

- accept these notices by adding the notation "accepted without prejudice"
- file the original at the IRB registry designated by the IAD
- forward a copy of the notice and the complete CIC file to the appropriate appeals office
- advise the visa office by telex that an appeal has been filed, and request that their file be forwarded immediately to the appeals office responsible for preparing the record.

Since it is the jurisdiction of the IAD to make a definitive ruling on appeal rights, it is futile to argue the matter with the person concerned.

If the refusal of the application for permanent residence was based on a determination that the sponsor does not meet the requirements for sponsorship, or that the applicant is not a member of the family class, the issue of whether or not the sponsor is entitled to appeal to the IAD will be decided by the IAD if the sponsor files a notice of appeal. When an applicant is determined by the IAD not to be a member of the family class, the jurisdiction of the Board comes to an end and it is incapable of exercising its equitable powers under A77(3)(b).

9. LATE-FILED APPEALS

When the person concerned or counsel does not enter a notice of appeal within the prescribed period of time, and subsequently raises the possibility of an appeal with an IO, the officer will:

- if contacted by telephone, point out the time limits imposed, and give the address and telephone number of the appropriate IRB registry which the person could contact for further information, or
- if contacted by telex, facsimile, telegram or letter, acknowledge receipt and inform the writer that a copy of the communication is being forwarded to the IRB registry (giving the address) for consideration. The officer should also forward a copy of the acknowledgement, together with copies of the incoming communication and the removal order or refusal letter, to the appropriate registrar without comment. Where applicable, the IO should include a photocopy of the incoming envelope with the postmark date visible, and
- in all cases, communicate the information in the same manner to the appropriate appeals office.

An IO served with a notice of appeal after expiry of the time stipulated for filing will:

- remind the person of the time limitations
- verify that the date of the refusal is accurately contained in the notice
- acknowledge service by signing and dating the form in the appropriate section, and adding the notation *Accepted without Prejudice*
- file the original notice at the IRB registry designated by the IAD
- forward a copy of the notice and the complete CIC file to the appropriate appeals office, and
- advise the visa office by telex that an appeal has been filed, and request that their file be forwarded immediately to the appropriate appeals office.

It is your responsibility to file a motion contesting the jurisdiction of the IAD to hear the appeal. In these cases, the usual practice is not to prepare the full record until the IAD determines whether or not it has jurisdiction to hear the appeal. You should retain all documents and notes in case it becomes necessary to file the record at a later date.

10. WITHDRAWAL OF APPEALS

The appellant or counsel may withdraw an appeal orally at the hearing, or by filing a notice signed by the appellant or counsel. The appellant or counsel should file the original notice with the IAD, with a copy to your office [*IAD Rules*, rule 30].

An IO may prepare a notice of withdrawal at the request of the person; appendix G gives the suggested wording. If an appellant who is represented by counsel advises the officer that his or her counsel has no knowledge of the withdrawal, the officer should recommend that the person discuss the proposed withdrawal with counsel, and should give the person the opportunity to do so before preparing the withdrawal notice.

If an appellant withdraws an appeal before the preparation of the record, your office need not distribute the record. Keep the material on file in case the appellant applies later to reinstate the appeal [*IAD Rules*, rule 31].

On receiving notice of a withdrawal, the IAD registrar will notify the other parties to the appeal [*IAD Rules*, rule 30(2)].

Your office should update the FOSS *Appeals* screen when you are notified that an appeal has been withdrawn. Update the *Motions* screen if an application or motion has been withdrawn.

Once the withdrawal has been filed, the appeal is not an impediment to removal, if applicable.

11. APPLICATIONS AND MOTIONS

The *IAD Rules* specify that certain requests made to the IAD are applications, while all other requests are called motions.

Requests to the IAD for a change of venue of a conference or a hearing, a postponement or adjournment, an abridgement or extension of a time limit set out in the rules, or to remedy non-compliance are made by way of application. A party must make an application in writing, file it at the registry, and serve it on the other party. Applications may be made orally at the hearing only if the panel is satisfied that no injustice is likely to be caused to any party [*IAD Rules*, rule 26].

All applications to the IAD, other than those specified in rule 26 of the *IAD Rules*, must be by way of motion. For example, if a party to an appeal wants the IAD to reopen an appeal, the party will bring a motion before the IAD asking it to do so.

While you may make some simple motions orally during the hearing without prior notice (such as excluding a potential witness from the hearing room), you must make most motions by a formal notice of motion, specifying the grounds on which you are making the motion. You must accompany your notice by an affidavit setting out the facts on which you are basing your motion, and a concise statement of the law and arguments on which you are relying. The party bringing the motion must serve it on the other party, and file it, with three copies and proof of service, at the registry within five days after the date of service [*IAD Rules*, rule 27].

The respondent to the motion has a right to file a reply within seven days after being served with the motion, and the applicant may respond to the reply within seven days after service of the reply. The IAD may dispose of a motion without a hearing if it is satisfied that no injustice is likely to be caused [*IAD Rules*, rule 27].

If an IO is served with a notice of motion, the officer will:

- remind the person concerned that it is his or her responsibility to file the original notice with the IAD
- immediately send copies of the notice and accompanying material to the appropriate appeals office and to the Chief of the Appeals Section at National Headquarters. In the case of motions, speed is especially important because of the period of seven days set out in the *IAD Rules* for reply [rule 27]
- if removal is imminent, ensure that the responsible CIC is aware of the motion, so that deferral of removal can be considered in appropriate cases pending disposition of the application or motion. For further information on removals, see chapter EC 6.

When you receive a notice of application or a notice of motion, you should verify that the notice has been filed with the IAD and that the CIC and Chief of the Appeals Section at National Headquarters have a copy. You should review the motion or application to determine

whether a consent to it is warranted, or whether you should oppose it and file a reply. Complete the FOSS *Motions* screen when you are notified of the filing of a motion or application.

After the hearing of the application or motion, complete the FOSS *Motions* screen, provide a report to the Chief of the Appeals Section at National Headquarters, send a copy of the decision to the CIC, and provide any necessary guidance to the CIC.

12. APPLICATIONS TO RETURN FOR A HEARING AFTER REMOVAL OR DEPARTURE

12.1 Notice to the person

If an appellant informs you that he or she plans to leave or has left Canada before the disposition of the appeal, you should inform the person of the right under A75 to apply to the IAD for authorization to return for the hearing. Your office may send an appropriate letter informing the appellant of this provision. CICs should keep you informed of the appellant's departure and current address.

12.2 Appeals office action

When the appellant has informed the IAD in writing of his or her desire to appear in person at the appeal hearing, the registrar will advise your office [*IAD Rules*, rule 34(1)]. On receiving the registrar's notification, your office should:

- within five days of notice from the registrar, file a written submission to the IAD on whether or not the appellant should be allowed to return and, if so, subject to what terms and conditions [*IAD Rules*, rule (R34(2)], and
- provide copies of the submission to the CIC and the Chief, Appeals Section, National Headquarters.

Appendix H gives a sample submission.

13. RETURN TO CANADA FOR OTHER PURPOSES WHILE AN APPEAL IS PENDING

When an appellant leaves or is removed from Canada while the appeal is pending, and wishes to return for purposes other than to attend the appeal hearing, the appellant can request a visa office to issue a Minister's permit for the visit.

14. RETURN DURING A STAY OF EXECUTION ORDERED BY THE IAD

The Act provides that a stay of removal granted by the IAD is sufficient authority for the appellant to return to Canada during the period of the stay [A56(2)]. An appellant returning to Canada under these circumstances does not require the consent of the Minister.

15. REOPENING AN INQUIRY BY DIRECTION OF THE IAD

When the IAD directs the reopening of the appellant's inquiry to obtain additional evidence or testimony, your office must advise the CPO section [A72]. Your manager should follow up on the progress of the reopening.

Counsel and the CPO in a reopened hearing will pose appropriate questions to witnesses and introduce relevant documents, but will not present arguments or submissions.

16. POST-HEARING REPORTS

After the IAD hearing, you must prepare a report including the following information:

- the date and place of hearing
- the names of all persons present, including panel members and witnesses
- a summary of the evidence and arguments, and
- the position of the respondent on whether the appeal should be dismissed.

Forward the report to the Appeals Section at National Headquarters, and retain a copy on your file.

17. NOTATIONS ON DOCUMENTATION

When you prepare an appeal record for an appeal hearing, mark the original *APPEAL — URGENT* and all copies *CERTIFIED TRUE COPY* in red on the front page. If the appellant is detained under the Act when the record is distributed, mark *DETAINED* on the front page of the original and all copies. If an appellant from contiguous territory has been removed under A49(1.1) pending appeal, mark *REMOVED* on the front page of the original and all copies of the record.

PART II HEARINGS BEFORE THE CONVENTION REFUGEE DETERMINATION DIVISION

18. THE MINISTER'S ROLE AT CRDD HEARINGS

Appendix I includes an overview of the CRDD.

18.1 The Minister's right to appear before the CRDD

The Minister has the right to be represented before the CRDD to present favourable or unfavourable evidence concerning a determination. Where it is believed that a refugee claim raises the issue of exclusion from the Convention or cessation of refugee status, the Minister's representative has the right to question the claimant and witnesses, to make representations and to present evidence [A69.1(5)(a)(ii)]. In determination hearings where exclusion or cessation is not in issue, the Minister's representative may question the claimant and witnesses, and make submissions only if the CRDD considers it appropriate [A69.1(5)(b)]. The Minister does not usually exercise these rights because presenting evidence, questioning witnesses and making representations at determination hearings are primarily the role of the refugee hearing officer [A68.1]. Information which you or an SIO or CPO feel is relevant to the claim should, in most cases, be forwarded to an RHO.

The Minister's position is that the Minister is responsible for rebutting arguments on jurisdictional or *Charter* issues relating to a determination that have arisen during the hearing of a claim. The Minister will not address the merits of a claim, except through the use of the statutory provisions set out in A69.1 and A69.2.

A representative of the Minister may attend any CRDD hearing as an observer [A69(1)].

18.2 The Minister's representative

You represent the Minister before the CRDD where required. Occasionally lawyers of the Department of Justice may also represent the Minister.

18.3 Providing the PIF to the Minister

The CRDD must provide the Minister with the claimant's Personal Information Form (PIF) if the Minister has requested this information in writing at the time the claim is referred by an SIO to the CRDD [A69.1(2)]. The Board will send it directly to your office, where you must review it and make a recommendation to your office manager on whether the Minister's participation at the hearing is warranted.

Normally, SIOs request PIFs under A69.1(2) only in exceptional cases, as a result of instructions by Regional or National Headquarters. At the time of referring the claim, the SIO may become aware that concrete and relevant evidence exists indicating that the claim is of a potentially controversial nature, involves exclusion from the protection of the Convention under Sections E and F of Article 1, or involves serious issues of criminality or security. In that case the SIO, after consulting his or her supervisor, will decide whether to request the PIF. For further information on exclusion issues, see section 19 below.

18.4 Cases warranting the Minister's intervention

Examples of cases that warrant the intervention of the Minister are:

- cases involving exclusion from the *Convention*
- cases involving serious criminality
- cases which could affect the security of Canada or its relationship with other countries, and
- cases which are of interest to the news media because of their controversial nature.

18.5 Notice

If the Minister decides to participate in a hearing, your office must serve a notice of intention to participate on the claimant, and file a copy with the CRDD Registry [*Convention Refugee Determination Division Rules*, rule 8(3)]. Although a notice of intention to participate can be filed with the CRDD at any time before or during a refugee determination hearing, up to the point of decision by the panel, the notice should be filed 15 days at most after the service of the PIF on the Minister [*CRDD Rules*, rule 8(2)]. Otherwise the CRDD may determine that the claimant is a Convention refugee without a hearing into the claim [A69.1(7.1)].

18.6 Expert witnesses

If a party, including the Minister, or the RHO intends to call an expert witness at a hearing, the party or the RHO must, at least 20 days before the date set for the hearing, serve on every party and file at the registry a report signed by the expert witness. The report must set out the name, address and qualifications of the expert, and a brief summary of the substance of the witness' proposed testimony [*CRDD Rules*, rule 21].

18.7 Preliminary conference

Before the determination hearing the CRDD may, by a notice to appear, direct the parties to attend and participate in a preliminary conference with an RHO on any matter concerning the claim. At the preliminary conference, the RHO will ascertain whether the person concerned has properly completed and signed the PIF, and will review the information and documents provided by the person to define the issues that relate to the claim and to identify the evidence that will be brought forward at the hearing. After the conference, the RHO will make a report setting out his or her opinion on whether the person could be determined to be a Convention refugee without a hearing, if

the Minister has not filed a notice of intent to participate within the time period set out in rule 8(2) of the *CRDD Rules* [*CRDD Rules*, rule 18].

18.8 Conference

To ensure a full and proper hearing and to dispose of an application or claim expeditiously, the CRDD may direct the parties to attend a conference to be held before or during a hearing, in the presence of a member or an RHO, on any matter related to a claim or application. The conference's purposes include disclosing information, statements and documents intended for production at the hearing, and simplifying the hearing by defining the issues and admitting certain facts and documents. Any agreement concluded at a conference must be signed by the participants and filed at the registry, along with any documents that have been admitted during the conference [*CRDD Rules*, rule 20].

18.9 Public hearings

Any person may make an application to the CRDD to allow the hearing to be held in public [A69(2)(a)]. An application is made in accordance with the *CRDD Rules* [rule 22]. The Minister does not generally take a position on such applications.

19. EXCLUSION

Appendix J includes further information on exclusion clauses.

19.1 Appeals office action before a CRDD hearing

Information may have arisen before or during an inquiry indicating that the claimant is a member of an excluded class of persons under sections E or F of Article 1 of the *Convention*. The CPO's supervisor must forward to your office a full report, setting out the grounds on which the supervisor suspects the claimant is excluded. You then make a recommendation to your office's manager on whether the Minister's intervention is warranted under A69.1(5)(a)(ii).

If the participation of the Minister is warranted on the grounds that matters involving sections E or F are raised by the claim, the notice of intent to participate must specify the grounds and the parts of sections E or F that are relevant to the claim, and must set out the law and facts on which the Minister relies [*CRDD Rules*, rule 9(1)].

19.2 Appeals office action during and after a CRDD hearing

In deciding a case where exclusion is raised, usually the CRDD will first determine if the person would be included in the definition of Convention refugee if the exclusion provisions did not apply. This issue is referred to as "inclusion". If the person would meet the definition, the CRDD will then decide if the exclusion provisions of sections E or F of Article 1 of the *Convention* apply.

Because it is often difficult in practice to divide the issues and evidence into separate inclusion and exclusion categories, the CRDD may decide to hear all the evidence on both inclusion and exclusion before rendering a decision.

The Commission will process a finding that the claimant is not a Convention refugee based on the exclusion provisions in the same manner as a case where the person was found by the CRDD not to be a Convention refugee for some other reason.

On notification of the decision, if you, in consultation with your supervisor, believe that an application for judicial review of the decision is warranted, you must immediately bring the decision directly to the attention of the Chief, Appeals Section, National Headquarters (see chapter EC 9). If you did not receive written reasons with the notice of decision, you should also make a written request for the Board's reasons. When you receive the reasons, send a copy to the Chief, Appeals Section, National Headquarters. Then update the CRDD *Information* screen on FOSS.

20. APPLICATIONS FOR CESSATION OF CONVENTION REFUGEE STATUS

Appendix K includes further information on applications for cessation.

20.1 Appeals office action before a CRDD hearing

Where cessation grounds exist, they will most often come to an IO's attention where:

- a permanent resident, who was found to be a Convention refugee, is being reported for inquiry, or
- a person found to be a Convention refugee is being considered for landing.

In cases where cessation may apply, the CIC manager should send a report on the case, and originals of any relevant documents, to your office. Your office's manager will consult with the Chief of the Appeals Section at National Headquarters on the appropriateness of bringing an application.

If the Chief of the Appeals Section concurs, your office will:

- begin the application for cessation by filing a notice of application at the IRB registry from which the refugee determination decision issued. Address the notice of application to the Refugee Division, specifying the parts of A2(2) that are relevant to the case, and setting out the grounds on which the application is based. Include a supporting affidavit.
- serve a copy of the application on the person concerned, and file proof of service with the IRB registry [*CRDD Rules*, rules 7(3) and 7(4)].
- update the CRDD *Information* screen on FOSS.

20.2 Appeals office action after a CRDD decision

Your office will notify the CIC of the CRDD's decision. If the decision is against the Minister, and in consultation with your supervisor you believe that proceedings for judicial review of the decision may be warranted, you must immediately bring the decision directly to the attention of the Chief, Appeals Section, National Headquarters (see chapter EC 9).

If the decision is against the Minister, make a written request for reasons to the CRDD within ten days after the day on which the Minister is notified of the decision [A69.3(7)(b)]. If the decision is against the person concerned, written reasons will accompany the decision [A69.3(7)(a)]. Send a copy of the reasons to the Chief of the Appeals Section at National Headquarters.

Where a person determined to be a Convention refugee is subject to cessation procedures, a direction for inquiry normally will not be issued until a decision has been rendered.

You should record the disposition of the cessation application in the CRDD *Information* screen on FOSS.

If adverse information exists which is not yet sufficient to lead to cessation proceedings, the CIC should record it as an *NCB* entry in FOSS for possible future consideration.

21. RECONSIDERATION HEARINGS

IOs should bring to the attention of the CIC manager any information which tends to establish that grounds to reconsider and vacate a person's refugee status exist. The CIC manager should prepare a detailed report, attaching original documents if available, or certified true copies, and keeping in mind these principles:

- the person's testimony to a visa officer regarding intentions during a proposed visit is usually insufficient in itself for a reconsideration application
- the strongest type of evidence relating to fraud or misrepresentation will usually deal with issues such as identity, nationality and country of residence, indicating that the claim is a complete fabrication rather than merely being based on a few incorrect details, and
- the fraudulent means, misrepresentation, suppression or concealment of a material fact could have been exercised by the person concerned or by another person.

If it appears to the CIC manager that the person's claim was probably based on fraud or misrepresentation of a material fact, the manager should send the report and supporting material to the manager of your office.

Appendix L includes further information on reconsideration hearings.

21.1 Appeals office action before a CRDD decision

Your office's manager reviews the material, decides whether or not to seek leave to file a reconsideration application, consults the Chief of the Appeals Section at National Headquarters, and notifies the CIC of the decision.

Applications for leave to apply to vacate a person's refugee status should be started in every case where sufficient evidence exists. If an application for leave is warranted, file the notice of application to the Chairperson at the IRB registry from which the refugee determination decision was issued. The notice should specify the grounds on which the application is based, and be accompanied by an affidavit setting out the facts of the case [*CRDD Rules*, rule 7(1)].

If the Chairperson grants leave, begin the actual application by:

- filing at the IRB registry from which leave was granted a notice of application addressed to the Refugee Division, setting out the grounds on which the application is based, and a supporting affidavit setting out the facts of the case
- serve on the person concerned a copy of the application and a copy of the Chairperson's decision granting leave
- file proof of service with the IRB registry [*CRDD Rules*, rules 7(3) and 7(4)]

- send a copy of the application to the Chief, Appeals Section, National Headquarters, and
- complete the CRDD *Information* screen on FOSS.

21.2 Appeals office action after a CRDD decision

If the CRDD denies the Minister's application, written reasons will accompany the decision. If the application is allowed and the person's refugee status is vacated, your office must file a written request for written reasons from the CRDD within ten days after being notified of the decision [A69.3(7)]. On receiving the decision, if you, in consultation with your supervisor, believe that proceedings for the judicial review of the decision may be warranted, you must immediately bring the decision directly to the attention of the Chief, Appeals Section, National Headquarters (see chapter EC 9). When you receive the reasons, send a copy to the Chief, Appeals Section, National Headquarters, and complete the CRDD *Information* screen on FOSS .

A decision on whether or not a direction for inquiry should be issued in a case where a reconsideration application has been made would usually be deferred until the application has been decided.

Once Convention refugee status is vacated, any removal order which may exist or subsequently be made can be executed as if the person had never been recognized as a refugee.

22. WITHDRAWAL OF A CRDD APPLICATION

A refugee claimant may withdraw his or her claim or application by written notice filed at the CRDD registry, or orally during the CRDD hearing [*CRDD Rules*, rule 33(1)]. When a claim or application is withdrawn, the registrar is required to provide written notification to the Minister [*CRDD Rules*, rule 33(2)].

An IO may prepare a notice of withdrawal at the request of the claimant. The IO will:

- ensure that the claimant fully understands the consequences of the action and has the opportunity to discuss it with his or her counsel, if applicable
- if necessary, have the original notice of withdrawal translated at the Commission's expense
- ensure that the notice is signed by the claimant, a witness and (if applicable) the interpreter, and
- give or send copies to the claimant, the IRB registry and your office.

Once the CRDD has confirmed acceptance of a withdrawal of a refugee claim by the person concerned, the conditional removal becomes effective [A32.1(6)(a)].

When the CIC receives notification of the CRDD's confirmation of the withdrawal of a refugee claim by a person concerned, the CIC should immediately update the CRDD *Information* screen on FOSS.

23. ABANDONMENT OF REFUGEE CLAIMS AND APPLICATIONS FOR CESSATION AND RECONSIDERATION

To ensure that refugee matters are dealt with promptly, and to discourage abuse by claimants seeking delays, the CRDD is empowered to conclude cases where the applicant has failed to proceed expeditiously.

The CRDD panel hearing a refugee claim, or an application for cessation or reconsideration of refugee status, has jurisdiction to declare, after giving the claimant a reasonable opportunity to be heard, the claim or application abandoned for failure to appear or to otherwise proceed expeditiously with the matter [A69.1(6) and A69.3(2)].

If a claimant fails to appear for a determination hearing, or the Minister's representative fails to appear for the hearing of a cessation or reconsideration application, the CRDD may declare the matter to have been abandoned. Before doing so, it will serve on the parties a notice to attend a hearing on the abandonment. The notice will inform the parties that if, at the end of the abandonment hearing, the CRDD does not declare the claim or application to have been abandoned, the CRDD will forthwith commence or resume the hearing [*CRDD Rules*, rule 32].

If the CRDD serves your office with a notice to appear at a hearing concerning abandonment by the Minister, you should consult the Appeals Section at National Headquarters.

In appropriate cases, you may file a withdrawal of the cessation or reconsideration application. Otherwise, you must appear at the hearing to explain the apparent lack of diligence in proceeding with the application or the failure to appear [*CRDD Rules*, rule 33].

At the hearing, the CRDD may either declare the application abandoned or rule that the application was not abandoned. In the latter case the hearing into the claim or application will continue immediately [*CRDD Rules*, rule 32(2)].

You must notify the CIC of the decision on abandonment, and update the CRDD *Information* screen on FOSS.

APPENDIX A
ADDRESSES OF APPEALS OFFICES

Quebec and the Atlantic Provinces

Manager, Immigration Appeals Office
CIC Enforcement
1200 Papineau Street, 2nd Floor
Montreal, Quebec
H2K 4H2
Tel.: (514) 283-0944
Fax: (514) 496-1882

Ontario, Manitoba and Saskatchewan

Manager, Immigration Appeals Office
CEIC
1 Toronto Street, Suite 705
Toronto, Ontario
M5C 2V6
Tel.: (416) 973-4800
Fax: (416) 973-1537

Alberta, British Columbia, Yukon, and the Northwest Territories

Chief, Appeals
B.C./Yukon Region, Immigration
1148 Hornby Street
Vancouver, B.C.
V6Z 2C3
Tel.: (604) 666-1730
Fax: (604) 666-4835

APPENDIX B
ADDRESSES OF IRB OFFICES

Administration only

Immigration and Refugee Board
240 Bank Street
Ottawa, Ontario
K1A 0K1
Tel.: (613) 995-6486
Fax: (613) 952-9083

The Atlantic Provinces, Quebec, and the Regional Municipality of Ottawa-Carleton (IAD and CRDD)

The Registrar
Immigration and Refugee Board
Montreal Regional Office
Complex Guy Favreau
200 René Lévesque Boulevard West
East Tower, Room 102
Montreal, Quebec
H2Z 1X4
Tel.: (514) 283-7733
Fax: (514) 283-0164

Ontario, except the Regional Municipality of Ottawa-Carleton (IAD and CRDD)

The Registrar
Immigration and Refugee Board
Toronto-Front Regional Office [IAD and CRDD]
1 Front Street West, 5th Floor
Toronto, Ontario
M5J 1A5
Tel.: (416) 973-6035
Fax: (416) 973-9307

The Registrar
Immigration and Refugee Board
Toronto-University Regional Office [CRDD]
70 University Avenue, 7th Floor
Toronto, Ontario
M5J 2M5
Tel.: (416) 954-1064
Fax: (416) 973-1165

Manitoba and Saskatchewan (IAD and CRDD)

The Registrar
Immigration and Refugee Board
Winnipeg Regional Office
185 Carlton Street, 3rd Floor
Winnipeg, Manitoba
R3C 3J1
Tel.: (204) 949-3553
Fax: (204) 983-8525

Alberta and Northwest Territories (CRDD)

The Registrar
Immigration and Refugee Board
Calgary Regional Office
205 - 9th Avenue S.E., 9th Floor
Calgary, Alberta
T2G OR3
Tel.: (403) 292-6134
Fax: (403) 292-6131

Alberta and Northwest Territories (IAD)
British Columbia and Yukon (IAD and CRDD)

The Registrar
Immigration and Refugee Board
Vancouver Regional Office
800 Burrard Street, Suite 1600
Vancouver, B.C.
V6Z 2J9
Tel.: (604) 666-5946
Fax: (604) 666-3043

APPENDIX C
OVERVIEW OF THE IMMIGRATION APPEAL DIVISION

Established under A57, the IAD is an administrative tribunal that is completely independent of the Commission and our Minister.

1. JURISDICTION

The IAD has powers to correct errors of law or fact, or mixed law and fact, in decisions under appeal. It also has discretionary powers, enabling it to reverse decisions made under the Act where it is of the opinion that the circumstances of the case, in equity, warrant such action.

The principal matters that may be brought before the IAD are:

- appeals against removal (see chapter EC 5, section 5 and appendix D below)
- sponsorship appeals (see chapter EC 5, section 6 and appendix E below), and
- appeals by the Minister (see chapter EC 5, section 7).

In the case of a permanent resident ordered removed from Canada, the IAD can consider "all the circumstances of the case" [A70(1)] and in other appeals, any "humanitarian and compassionate considerations" [A70(3), A77(3)] that might be present. The IAD will balance these factors against the grounds for the removal order or refusal under appeal, and if it finds in favour of the appellant, will set aside the decision [A73(1), A74(2)].

2. FORMAT

The IAD is a court of record [A69.4(1)], and conducts public hearings on the basis of the adversary system and established judicial principles, rules and precedents.

The IAD hearings are *de novo*, and therefore not limited strictly to reviewing the evidence that led up to the refusal or removal order. In *Kahlon v. Minister of Employment and Immigration* (FCA, Doc. No. A-115-86, February 6, 1989), the Federal Court of Appeal established that the IAD must hear the whole case, taking into consideration any additional facts brought to its attention.

3. EVIDENCE

The IAD has broader powers regarding the admission of evidence than regular courts. During a hearing the IAD may receive evidence it considers "credible or trustworthy" [A69.4(3)(c)], even if the strict rules of evidence have not been met.

4. DECISIONS

The IAD may dispose of an appeal by allowing it or dismissing it. In the case of an appeal against a removal order, the IAD might instead direct that the execution of the order be stayed for a set period of time, with terms and conditions attached [A73(1), A74(2)]. The decision to stay a removal order can be reconsidered by the IAD at any time [A74(3)]. Where the Minister is successful in appealing a favourable decision by an adjudicator, the IAD will make the removal order that the adjudicator should have made [A73(2)].

5. REASONS

In A70 and A71 appeals, the IAD is required to provide written reasons if the person concerned or the Minister so request within ten days after having been notified of the decision [A69.4(5)]. In A77 appeals, the IAD is required to provide reasons for its decision to the person concerned and the Minister [A77(4)].

6. ROLES

6.1 The Minister's representative

The Minister is party to all appeals filed with the IAD. In most cases the Minister's representative is respondent, taking a position supporting the decision under appeal.

The Minister may also file appeals with the IAD as the appellant to challenge favourable decisions of adjudicators [A71].

The Minister is represented at the IAD by appeals officers, as delegated in Instrument I-24. On occasion, lawyers of the Department of Justice are assigned to provide this representation.

Appeals officers and Department of Justice lawyers present the cases and take positions in accordance with instructions channelled through the Appeals Section, National Headquarters. These instructions may be specific to an individual case, or be in the form of general policy instructions applicable to the various categories of cases.

6.2 Appeals Section, National Headquarters

The Chief of the Appeals Section at National Headquarters provides functional direction on cases before the IAD.

APPENDIX D
PERSONS WHO MAY APPEAL AGAINST REMOVAL

Persons ordered removed from Canada after an immigration inquiry have had the benefit of a full hearing on the allegations against them. The Act recognizes an additional commitment to permanent residents, visa holders and Convention refugees by allowing them to appeal removal orders and conditional removal orders to the IAD, not only on the basis of legal and factual questions relating to the allegations at the inquiry, but also on the basis that special consideration may be warranted.

1. PERMANENT RESIDENTS AND RETURNING RESIDENTS

Permanent residents and holders of valid returning resident permits may appeal removal orders or conditional removal orders to the IAD on questions of law and fact, or mixed law and fact, and on the ground that "having regard to all the circumstances of the case" they should not be removed from Canada [A70(1)].

It is expected that in early 1994, A70(1) will be amended to reflect the proclamation of A10.3, which will establish the requirement that every permanent resident be issued a document establishing that the person is a permanent resident. Persons lawfully in possession of a document provided to them under A10.3 will enjoy the same rights of appeal to the IAD as permanent residents.

2. VISA HOLDERS

Where they were reported under A20(1), visitors seeking entry with valid visitor's visas and immigrants seeking landing with valid immigrant visas may appeal from a removal order or a conditional removal order to the IAD on questions of law or fact, or on the ground that "having regard to the existence of compassionate or humanitarian considerations" they should not be removed from Canada [A70(2)(b), A70(3)].

3. CONVENTION REFUGEES

Persons who have been determined to be Convention refugees under the Act or its regulations and who are not permanent residents have the right to appeal a removal order or conditional removal order to the IAD [A70(2)(a)]. The grounds of appeal are the same as for visa holders.

This provision does not apply to unsuccessful refugee claimants, or persons whose claims have not yet been determined.

4. EXCEPTIONS

Persons falling within certain paragraphs of A19 and A27 do not have the full appeal rights described in sections 1 to 3 of this appendix. If an A40(1), an A40.1(1) or an A82 certificate has been issued or an adjudicator has found the person to be described in A19(1)(c.2), A19(1)(d), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k) or A19(1)(l), the person may only appeal on questions of law or fact [A70(4)]. If an A82 certificate has been issued with respect to an appellant, the IAD is required to dismiss any appeal made under A70(1)(b), A70(3)(b) or A77 [A82(2)].

5. REOPENING APPEALS

The IAD will consider applications to reopen appeals made under A70 that were already concluded, to hear new evidence which was, for good reason, unavailable at the original hearing, if the evidence would have been likely to affect the disposition of the case under the IAD's discretionary powers [*Grillas v. Minister of Manpower and Immigration* (1971), [1972] S.C.R. 577].

APPENDIX E
STAYS

1. STAYS OF REMOVAL WHERE PROCEEDINGS BEFORE THE IAD ARE PENDING

Under A49(1)(a), the execution of an effective removal order is stayed, where the person concerned has a right of appeal to the IAD, at the request of that person until the time provided for the filing of the appeal has elapsed. The time provided for filing an appeal to the IAD is 30 days from the day on which the removal order was served on the person [*IAD Rules*, rule 6(1)].

Where an appeal from the removal order is filed with the IAD, the execution of the removal order is stayed until the appeal has been heard and disposed of or has been declared abandoned by the IAD [A49(1)(b)].

In cases where a person who has claimed to be a Convention refugee or whose appeal has been dismissed by the IAD has been determined by an adjudicator to be described in one of the following paragraphs of the Act, the removal order is stayed only until seven days have elapsed from the time the order was made or became effective, whichever is later, unless the person agrees that the removal order may be executed before the expiration of the seven-day period [A49(1)(d)]: A19(1)(c), A19(1)(c.1), A19(1)(c.2), A19(1)(d), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k), A19(1)(l), A19(2)(a), A19(2)(a.1), A19(2)(b), A27(1)(a), A27(1)(a.1), A27(1)(a.2), A27(1)(a.3), A27(1)(d), A27(1)(g), A27(1)(h), or A27(2)(d).

For stays in cases where judicial review is sought for a decision of the IAD, please see chapter EC 9.

2. NO STATUTORY STAYS IN CERTAIN CASES

Removal orders are not stayed under A49(1) for persons with a right to appeal to the IAD who are residing or sojourning in the United States or St. Pierre and Miquelon [A49(1.1)].

The Federal Court can, at any time, order that the execution of a removal order be stayed. *No person must ever be removed in contravention of such an order.* Similarly the Minister can, through his or her officials, give an undertaking not to remove a person for a certain length of time. This is usually done in the context of litigation. *No person must ever be removed in contravention of such an undertaking.*

It is *imperative* that an accurate entry respecting the stay order or undertaking be made in FOSS as soon as possible after the order is made or the undertaking given. If the order or undertaking is made in the context of litigation, make the entry on the *Litigation* screen.

If any doubt exists concerning our ability to remove an unsuccessful claimant, the CIC should consult Regional Headquarters. It is important that removals not be deferred unnecessarily because of misinterpreting these provisions.

APPENDIX F
APPEAL PROVISIONS FOR FAMILY-CLASS REFUSALS

When a sponsored application for a permanent residence is refused, the sponsor must be informed of the reasons for the refusal [A77(1)] and, if the sponsor is a Canadian citizen or permanent resident, of the right of appeal to the IAD [*Immigration Regulations*, sections 41(1), 41(1.1), 41(2)]. If a Canadian citizen or permanent resident sponsors an application for landing by a member of the family class, and the application is refused, the sponsor may appeal the refusal of the application to the IAD [A77(3)].

1. SPONSORS RESIDING IN PROVINCES UNDER A108 AGREEMENTS

If a sponsor resides in a province that has sole responsibility for establishing and applying financial criteria for sponsors under an A108 agreement, the sponsor has no right of appeal to the IAD on any ground of law, fact or mixed law and fact when both of the following circumstances exist:

- the refusal of the application is based on the rejection of the person's application for sponsorship by an official of that province on the grounds that the person failed to meet those criteria or to comply with any prior undertaking concerning the sponsorship of any application for landing, and
- the laws of that province provide the person with a right to appeal the rejection of the person's application for sponsorship [A77(3.1)(a), A77(3.1)(b)].

At present, Quebec is the only province with such an agreement.

2. GROUNDS FOR APPEAL

The appeal to the IAD may be based on questions of law or fact, or on the ground that "there exist compassionate or humanitarian considerations that warrant the granting of special relief". However, if the IAD determines that the applicant for landing is not a member of the family class, it cannot exercise its equitable jurisdiction to consider humanitarian and compassionate factors [A77(3)].

3. DISPUTED APPEAL RIGHTS

Where the refusal is based on a determination that the sponsor does not meet the requirements for sponsorship, or that the applicant is not a member of the family class, the issue of whether or not the sponsor is entitled to appeal to the IAD will be decided by the IAD if the sponsor files a notice of appeal. When an applicant is determined by the IAD not to be a member of the family class, the jurisdiction of the Board comes to an end and it is incapable of exercising its equitable powers under A77(3)(b).

4. PROTECTION OF CONFIDENTIAL INFORMATION USED BY A VISA OFFICER IN ASSESSING APPLICATIONS FOR PERMANENT RESIDENCE

The visa officer may have obtained information in confidence from the government or an institution of a foreign state, or from an international organization of states or an institution of such an organization, and used that information in assessing a sponsored application for permanent residence which is subsequently refused and appealed to the IAD under A77(3). If so, the Minister may make an *in camera* application in the absence of the person concerned to the Federal Court – Trial Division for the non-disclosure of that information to the appellant. The grounds of the application will be that disclosure of such information would be injurious to national security or the safety of persons [A77(3.2)].

If such an application is made, the hearing of the appeal is postponed or adjourned until the Court renders its decision, under A77(3.3).

APPENDIX G
NOTICE OF WITHDRAWAL OF APPEAL

In the Immigration Appeal Division

BETWEEN

_____ Appellant

AND

The Minister of Employment and Immigration Respondent

TAKE NOTICE that, pursuant to Rule 30 of the Immigration Appeal Division Rules, I, _____, HEREBY WITHDRAW my appeal entered on the ___ day of _____, and acknowledge that I have no further interest in exercising my right to appeal from the removal order issued against me on the ___ day of _____ 19__.

The nature and effect of my withdrawal have been fully explained to me and my withdrawal is made voluntarily without influence of coercion by any person.

DATED at _____, this ___ day of_____,19__.

_____ _____
Witness Appellant

TO: The Registrar

Immigration Appeal Division

DECLARATION OF INTERPRETER

I, _____, of _____, do solemnly declare that I have faithfully and truly interpreted this withdrawal of appeal to the appellant _____, in the appellant's own language, namely, _____, and that the appellant has informed me that he/she completely understands its nature and effect. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Declared before me at_____, _____

Province of _____, this Signature of Declarant

___ day of _____, 19__.

_____
Immigration Officer

APPENDIX H
SAMPLE SUBMISSION ON TERMS AND CONDITIONS FOR RETURN UNDER A75

If the appellant's return to Canada is authorized by the Appeal Division under section 75 of the Immigration Act, the respondent respectfully recommends that the following conditions be imposed:

1. The appellant should carry to Canada and present to the examining officer at the port of entry:
   (a) evidence of adequate funds and arrangements for accommodation, maintenance and return transportation
   (b) documentary evidence of readmissibility to the country from which he (or she) came to Canada, and
   (c) the order of the Appeal Division authorizing his (or her) entry.
2. Unless the appeal is allowed at the conclusion of the hearing, the appellant must leave Canada immediately following the hearing through the same port of entry at which he (or she) came in and present himself (or herself) to an immigration officer at that port before departure.

APPENDIX I
OVERVIEW OF THE CONVENTION REFUGEE DETERMINATION DIVISION

The provisions of the *Immigration Act* relating to Convention refugees reflect Canada's obligations as a signatory to the United Nations 1951 *Convention Relating to the Status of Refugees* and 1967 *Protocol Relating to the Status of Refugees*. To determine fairly and expeditiously who is a genuine refugee and is thus entitled to the protection of the Convention, the Act provides a simple, efficient procedure. This procedure provides an effective means of ensuring that claims are heard in a timely fashion and that persons who should not have access to the refugee determination system leave Canada quickly.

A person may make a claim to be a Convention refugee at any time throughout the administrative and inquiry process before the making of an order. When a person makes a refugee claim, he or she will be referred to an SIO, who will determine whether that person is eligible to be referred to the CRDD [A45]. If the claimant is found to be eligible, the SIO will refer the claim to the CRDD, which will then determine the claim [A46.02].

To provide for the presentation of evidence in an atmosphere that takes into account the fears which may exist for persons fleeing persecution, the legislation provides for the determination of most refugee claims in a non-adversarial fashion.

1. STRUCTURE

The CRDD is an independent tribunal that has exclusive jurisdiction to make determinations on refugee claims referred to it by an SIO [A46.02, A67]. CRDD members are appointed by Order in Council [A59, A61].

2. JURISDICTION

Two-member panels [A69.1(7)] of the CRDD make determinations, unless the claimant consents to a hearing by only one member [A69.1(8)]:

- the panel decides if a claimant is a refugee in accordance with the definition of Convention refugee contained in the Act [A2(1)]
- in reaching a decision, the panel is not bound by any legal or technical rules of evidence, but may base the decision on evidence adduced in the proceedings and considered credible or trustworthy in the circumstances of the case [A68(3)]. The panel may also consider generally recognized facts or any information that is within its specialized knowledge [A68(4)]
- one member of a two-member panel has to support a claim for the person to be determined to be a Convention refugee [A69.1(10)]. The panel renders its decision at the close of the hearing or as soon as possible afterwards, and a written notice of the decision is sent to the claimant and to the Minister [A69.1(9)]
- if the panel renders a split decision, the decision not favourable to the claimant is deemed to be the decision of the Board *only* if both the members of the panel are satisfied that:
  - the person has, without valid reason, destroyed or disposed of his or her identification documents [A69.1(10.1)(a)], or
  - the person has, since making the claim, visited the country of alleged persecution [A69.1(10.1)(b)], or
  - the country of alleged persecution is a country prescribed under A114(1)(s.1) to be a country that respects human rights [A69.1(10.1)(c)].

Claims are usually heard individually. The CRDD may decide to hear two or more claims in the same hearing where warranted by family relationships, friendships or associations leading to shared or related experiences [*CRDD Rules*, rule 10].

The Act's definition of the term "Convention refugee" [A2(1)] also provides a mechanism for denying status to certain categories of persons who would otherwise qualify, but do not need or are not deserving of Canada's protection. These exclusion provisions are dealt with before the CRDD.

The CRDD has jurisdiction to hear and decide on applications for cessation of Convention refugee status made by the Minister on the grounds that a person, previously determined under the Act or its regulations to be a Convention refugee, has ceased to be a refugee [A69.2(1), A2(2)]. Three-member panels hear these applications [A69.3(3)]; see appendix K below for more information on cessation.

The CRDD has jurisdiction to hear and decide if a positive refugee determination should be reconsidered and vacated on the basis that it was obtained by fraudulent means or misrepresentation, suppression or concealment of a material fact [A69.2(2)]. Three-member panels hear reconsideration applications [A69.3(3)]; see appendix L below for more information on reconsideration.

The CRDD may declare a refugee claim or an application for cessation or reconsideration to be abandoned if the applicant fails to appear at the time and place set for the hearing, or fails to provide the Board with information referred to in A46.03(2), or is otherwise in default in the prosecution of the claim [A69.1(6), A69.3(2)]. These provisions ensure that dilatory action does not prevent a claim from being dealt with expeditiously.

3. INTERVENTION OF THE MINISTER

Although a Minister's representative is not normally present at determination hearings before the CRDD, the Minister has a right to send a representative [A69(1)], to present evidence [A69.1(5)(a)(ii)] and, where the Board allows, to question the claimant and any witnesses and to make representations [A69.1(5)(b)].

Where matters pertaining to exclusion or cessation are to be raised, the Minister's representative may, as of right, question witnesses, present evidence and make representations [A69.1(5)(a)(ii)].

4. PARTICIPANTS IN HEARINGS

CRDD members receive special training in refugee matters and have access to a documentation centre which gathers information on country conditions, including human rights and refoulement records. The CRDD can also seek assistance from the United Nations High Commissioner for Refugees (UNHCR).

A Refugee Hearing Officer may assist the CRDD during the hearing of a claim by filing documentary evidence, informing the panel of any facts relevant to the claim, calling and questioning the claimant and any witnesses, and making written or oral representations [A68.1]. The role of the RHO at the hearing is to look for all available evidence that would be relevant to the claim and to present it to the panel in an impartial manner, to allow the CRDD panel to render an informed and considered decision.

Claimants have the right to be represented by counsel [A69(1)], but they may also present their cases themselves.

A **representative** may be designated for the claimant by the CRDD where the claimant is under 18 years of age or unable to appreciate the nature of the proceedings [A69(4); CRDD Rules, rule 11]. A designated representative must act in accordance with the wishes and best interests of the claimant. The CRDD pays an honorarium and expenses when the designated representative is not the parent or legal guardian of the subject.

The **Minister** is not usually represented at CRDD determination hearings. The Minister's representative has the right to tender evidence and, in exclusion or cessation cases, to question witnesses or make submissions [A69.1(5)(a)(ii)]. If the CRDD specifically gives leave, the Minister may also present evidence, question the claimant and any other witnesses, and make representations in the hearings of refugee claims not involving cessation or exclusion [A69.1(5)(b)]. An appeals officer will normally act as the Minister's representative. Appendices J and K below give further information on exclusion and cessation.

A representative of the **United Nations High Commissioner for Refugees** may also attend any hearing as an observer [A69(3.2)].

5. GUIDES TO THE INTERPRETATION OF CONVENTION REFUGEE PROVISIONS

Officers should keep in mind that claimants in Canada are not being dealt with under the provisions of the Convention directly, but under the provisions of the *Immigration Act*. Non-Canadian sources of interpretation are guidelines only and not binding. While authorities such as the *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva: Office of the United Nations High Commissioner for Refugees) will be helpful in the absence of Canadian sources, you must also consider Canadian authorities such as statutes and decisions on refugee determination. The *Criminal Code*, for example, contains definitions for "war crimes" and "crime against humanity", terms found in the schedule to the *Immigration Act*.

6. CONFIDENTIALITY OF HEARINGS

Hearings before the CRDD are conducted *in camera*. On application, the hearing will be conducted in public [A69(2)]. On application, however, the CRDD may make an order to ensure the confidentially of any hearing where it is satisfied that the life, liberty or security of any person would be endangered by reason of its proceedings being held in public [A69(3), A69(3.1)].

7. COMMUNICATION OF THE CRDD DECISION

The decision of the CRDD is normally sent to the claimant by mail. A copy of the decision of the CRDD will be forwarded to the CIC last responsible for the case, quoting the client's FOSS identification number.

8. CESSATION

A69.1(5)(a)(ii) allows the Minister's representative to cross-examine witnesses and make submissions at a determination hearing where matters involving A2(2) are raised by the claim. A2(2)(a) A2(2)(b), A2(2)(c), A2(2)(d) and A2(2)(e) describe the five categories of persons who at one time were Convention refugees but have since ceased to be Convention refugees. Although such issues will arise infrequently at determination hearings (the usual forum being the hearing of a cessation application), officers should be aware of the possibility. See appendix K below for further information.

Since the events that would trigger cessation under A2(2)(e) would not consist principally of actions of the claimant as in A2(2)(a), A2(2)(b), A2(2)(c) and A2(2)(d) cases, reliance on A69.1(5)(a)(ii) may not be appropriate for A2(2)(e) cases. *Appeals offices should contact the Appeals Section at National Headquarters for guidance in these situations.*

APPENDIX J
EXCLUSION CLAUSES

While the Convention recognizes that refugees are in need of protection, it also contains provisions whereby persons who might otherwise qualify for refugee status are excluded from the protection that this status provides. The Convention contains three exclusion categories, two of which are incorporated in the definition of Convention refugee in the Act. Persons who are members of the classes of persons described in these categories are considered to be either not in need or not deserving of international protection.

1. SECTION E

The definition of Convention refugee in A2(1) expressly excludes persons described in section E of Article 1 of the Convention. The text is set out in the Schedule to the *Immigration Act*:

> E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

In other words, a claimant in Canada who meets the section E test for a country other than the country of alleged persecution is excluded.

The reference to "having the rights and obligations" of a national need not mean that the person has all the rights of a national. It may be sufficient that the person have the same rights as nationals in areas that would be relevant to refugee status, such as protection against deportation, or expulsion for crimes that are not serious. In some countries, persons with status similar to our permanent residence status might meet the section E test.

It should be noted that the phrase "taken residence" implies continued residence and not a mere visit.

2. SECTION F

Persons described in section F of Article 1 of the Convention are also excluded from the definition of Convention refugee:

> F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
>
> (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
>
> (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
>
> (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Considering the effect of such exclusion, section F will usually be interpreted restrictively.

The expression "serious reasons for considering" does not require that the person have been convicted of a crime. Simply having participated in any such activity may be sufficient to exclude a person from the protection of the Convention.

The concept of war crimes, crimes against peace or crimes against humanity arose in the aftermath of World War II, and is restricted to that period. Annex V to the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* includes an extract from article 6 of the *Charter of the International Military Tribunal*, containing definitions of these terms which were prepared for the Nuremberg Tribunal:

> "The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organisations, committed any of the following crimes.
>
> "The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:
>
> (a) *Crimes against peace*: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

(b) *War crimes*: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose, of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) *Crimes against humanity*: namely, murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

"Leaders, organisers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan."

Annex VI to the UNHCR *Handbook* contains a list of other international instruments on this subject; see also IS9.21.

The question of a claimant having committed "a serious non-political crime outside the country of refuge prior to his admission to that country" is canvassed in paragraphs 151 to 161 of the UNHCR *Handbook*. Note that the offenses concerned could have been committed in any country other than Canada, not simply the country of origin.

The question of whether a claimant has been "guilty of acts contrary to the purpose and principles of the United Nations" is covered in paragraphs 162 and 163 of the UNHCR *Handbook*.

APPENDIX K
APPLICATIONS FOR CESSATION OF CONVENTION REFUGEE STATUS

The Convention recognizes that in certain circumstances a person who has been previously determined to be a Convention refugee will no longer need protection. The Act reflects the provisions of the Convention dealing with the cessation of Convention refugee status.

When considering refugee determination, you should keep in mind that a favourable determination does not result in the *granting* of Convention refugee status, but merely recognizes a status that already exists. Similarly, a successful cessation application does not result in rescinding status, but recognizes that the person is no longer a Convention refugee. In other words, whether or not a person is a Convention refugee at a particular time depends only on meeting the definition at that time.

A person determined to be a Convention refugee can cease to be a refugee. Section A69.2 gives the CRDD the authority to determine, upon application by the Minister, if a person has ceased to be a Convention refugee.

Cessation proceedings can apply to any person who was determined under the Act or its regulations to be a Convention refugee, including persons recognized as Convention refugees by Canadian visa officers abroad and persons found to be Convention refugees in Canada under the present or previous refugee-determination systems. Cessation is not available for persons landed under the backlog regulations or under any other special measure where there has been no formal determination of refugee status.

While a cessation application can be brought in the case of a person who was landed after being recognized as a Convention refugee, there would usually be no point in doing so because the cessation of refugee status would not directly affect the person's status as a permanent resident. A cessation application would, however, be appropriate in a case where independent A27(1) grounds existed, such as criminality or security.

1. GROUNDS

A2(2) provides that a person ceases to be a Convention refugee when:

- the person voluntarily reavails himself or herself of the protection of the country of nationality
- the person voluntarily reacquires his or her nationality
- the person acquires a new nationality and enjoys the protection of the country of this new nationality
- the person voluntarily re-establishes himself or herself in the country that the person left, or outside of which he or she remained by reason of fear of persecution, or
- the reasons for the fear of persecution in the country that the person left, or outside of which he or she remained, have ceased to exist. Under A2(3) a person would not cease to be a refugee if the person could establish that there are compelling reasons, arising out of the previous persecution, for refusing to avail himself or herself of the protection of the country of nationality or to return to the country of former habitual residence by reason of fear of persecution.

Authorities on refugee status agree that persons cease to be Convention refugees under those five circumstances only if they act voluntarily and intend to reavail themselves of the protection of their country of nationality. For example, renewing a passport is not necessarily an act that would lead to cessation of Convention refugee status. The person would have to be prompted by a desire to normalize relations with the government of the source country or to benefit from his or her national status. The intention to return to the country must be pursued and must be more than an occasional or incidental contact. In a case where the Convention refugee returns to the country of nationality, the cessation procedures cannot be started before that person returns to Canada.

2. HEARINGS

Cessation hearings are adversarial. A CRDD panel for the purposes of a cessation hearing is composed of three members [A69.3(3)], and the decision of the majority of the panel members prevails [A69.3(6)]. The Minister has the burden of establishing that a person has ceased to be a Convention refugee.

APPENDIX L
RECONSIDERATION HEARINGS

The principle behind the reconsideration provisions is to deny the continued protection of Convention refugee status to persons whose claims were based on fraud or misrepresentation, by vacating the positive determination.

1. GROUNDS

A69.2(2) states:

> The Minister may, with leave of the Chairperson, make an application to the Refugee Division to reconsider and vacate any determination made under this Act or the regulations that a person is a Convention refugee on the ground that the determination was obtained by fraudulent means or misrepresentation, suppression or concealment of any material fact, whether exercised or made by that person or any other person.

2. APPLICATIONS

Where the Commission believes that a favourable determination on Convention refugee status was obtained through one of the grounds stated in A69.2(2), the Minister's representative may, with leave of the Chairperson, make an application to the CRDD to reconsider and set aside the decision [A69.2(2)].

If the Chairperson is satisfied that there exists evidence which could have led to a different determination of the claim, the Chairperson may grant leave and refer the application to the CRDD for a hearing [A69.2(3)].

3. HEARINGS

Reconsideration hearings are adversarial. A CRDD panel for the purposes of a hearing on an application to vacate a person's refugee status is composed of three members [A69.3(3)], and the decision of the majority of the panel members prevails [A69.3(6)]. The Minister has the burden of establishing on the balance of probabilities that the CRDD's previous determination that the person is a Convention refugee should be vacated.

IMMIGRATION

Canada

Chapter EC 6
Removals

Enforcement manual

Citizenship and Immigration Canada
Citoyenneté et Immigration Canada

Removals

Abbreviations and Short Forms	
Act	*Immigration Act*, as amended
CIC	Canada Immigration Centre
Convention	United Nations 1951 *Convention Relating to the Status of Refugees* and 1967 *Protocol Relating to the Status of Refugees*
CRDD	Convention Refugee Determination Division of the Immigration and Refugee Board
CRU	Central Removal Unit
CSC	Correctional Service of Canada
FOSS	Field Operational Support System
IAD	Immigration Appeal Division of the Immigration and Refugee Board
ICO	Immigration Control Officer
IO	Immigration Officer
Minister	Minister of Employment and Immigration
NPB	National Parole Board
PCDO	Post–Claim Determination Officer
PDRCC Class	Post–determination refugee claimants in Canada class
RCMP	Royal Canadian Mounted Police
Reciprocal Arrangement	Reciprocal Arrangement between Canada Employment and Immigration Commission and the United States Immigration and Naturalization Service, Department of Justice for the Exchange of Deportees between the United States of America and Canada
SIO	Senior Immigration Officer
USINS	United States Immigration and Naturalization Service

1. INTRODUCTION 1
1.1 What this chapter is about 1
1.2 Policy intent 1

2. AUTHORITY TO REMOVE FROM CANADA 2
2.1 Removal orders 2
2.2 Departure notices 3
2.3 Service of orders 3
2.4 Execution of orders 3
2.5 Types of removals 3

3. VOLUNTARY REMOVAL 5
3.1 Appropriate circumstances 5
3.2 Time limits 5
3.3 The effect of voluntary removal 5
3.4 Voluntary removal arrangements 5
3.5 Verification of voluntary removal 6
3.6 Persons wanted for criminal offences or punishment 6
3.7 The place to which removal is effected 7

4. DEPARTURE ORDERS 8
4.1 Conditions for issuing departure orders 8
4.2 Applicable period for issuing a certificate 8
4.3 Factors that affect the applicable period for issuing a certificate of departure 8
4.4 Departure order information kit 9
4.5 Verifying compliance with departure orders 10
4.6 Failure to comply with a departure order 10
4.6.1. Persons not authorized to be in another country 10
4.6.2. Departure after the date specified 11
4.6.3. Unlawful return to Canada 11

5. REMOVAL ARRANGEMENTS TO ALL COUNTRIES OTHER THAN THE U.S. 12
5.1 Responsibilities of CRUs and inland offices 12
5.2 Responsibility for port–of–entry cases 12
5.3 Legal impediments that may stay removal 12
5.3.1. Statutory stays 12
5.3.2. Applications for stays of removal 14
5.3.3. Effect of other proceedings or orders 14
5.3.4. Inmates of correctional institutions 15
5.3.5. Correctional Service of Canada and provincial correctional authorities 15
5.4 Removing paroled persons 16
5.4.1. Persons eligible for parole 16
5.4.2. Persons released on full parole or statutory release 17
5.4.3. Persons released on day parole 17
5.5 Removal of refugee claimants who have been found not to be Convention refugees 17
5.6 Removal advice to the person concerned 18
5.7 Humanitarian and compassionate applications under A114(2) 18
5.8 Travel documentation 18
5.8.1. Travel documents 18
5.8.2. Disposition of travel documents 19

5.8.3. Travel documents for detained cases 19
5.9 Seizure of documents 20
5.10 Removal without a valid passport or travel documents 21
5.10.1. Removal without a valid passport 21
5.10.2. Removal with no travel documents 21
5.11 Visa requirements 21
5.12 Photographs and fingerprints 21
5.13 Medical histories 22
5.14 Assistance to leave Canada 22
5.15 Specific procedures for removing Convention refugees 23
5.16 Notice to transportation companies 23
5.17 Advance notification to airline companies of the profile of persons being removed 24
5.18 Notification to foreign governments 24
5.19 Notification to posts abroad, the Case Management Branch and the Removals Section of persons under removal order 25
5.20 Luggage 26

6. REMOVAL TO THE UNITED STATES UNDER THE RECIPROCAL ARRANGEMENT 27
6.1 Inland cases 27
6.1.1. Removal under the Reciprocal Arrangement without a letter of consent 27
6.1.2. Removal under the Reciprocal Arrangement with letters of consent 29
6.1.3. Advance notice of deportees of interest to U.S. law–enforcement authorities 30
6.1.4. Removal of persons allowed to return under A75 to attend an appeal 30
6.1.5. Removal to the U.S. following issuance of a deportation order after admission to Canada 31
6.1.6. Persons ordered removed while serving prison terms 32
6.2 Port–of–entry cases 32
6.2.1. Removal with letters of consent 32
6.2.2. Notice required for aliens if a Minister's permit is issued 32
6.2.3. Persons issued a rejection order or a direction to return to the U.S. after applying for admission at a Canadian POE 33
6.3 Variable cases 33
6.3.1. Notice required in cases involving medical care or treatment 33
6.3.2. Voluntary departure 33
6.3.3. Official records and privacy consideration 34
6.3.4. Removal orders appealed or other legal proceedings begun 34
6.3.5. Persons being extradited from Canada to the U.S. 34
6.3.6. Notification of persons being removed for criminal or drug offences 34
6.3.7. Request for confirmation of vital statistics in the U.S. 35
6.3.8. Removal via the U.S. to other countries 36
6.3.9. Arranging for an escort 36
6.3.10. Cases involving medical treatment or care 36
6.3.11. Document envelope 37

7. ARRANGING FOR AN ESCORT 38
7.1 Arrangements 38
7.2 Advance notification of removal arrangements to ports of departure of persons under exclusion and deportation orders 39
7.3 Instructions to escort officers 39
7.4 Subsistence for persons under removal order 40

7.5 Baggage and personal finances 40
7.6 Escort by transportation companies 40
7.7 Medical escorts 40
7.8 Escorts for removal via the U.S. 42

8. ESCORT RESPONSIBILITIES 42-1
8.1 Responsibilities of expulsion and escort officers 42-1
8.1.1. Safekeeping of documents and effects and the physical safety of persons 42-1
8.1.2. Precautions to prevent escape 42-1
8.2 Using the document envelope 42-1
8.3 Procedures for the carriage of deportees under escort 43

9. ESCORT PRECAUTIONS AND ESCAPE REPORTS 44
9.1 Escape or attempt to escape custody 44
9.2 Reports on persons escaping custody 44
9.2.1. Procedures if a person escapes from the custody of an IO 44
9.2.2. Procedures if a person escapes from the custody of facilities of a transportation company 44

10. SEIZING AND RETURNING DOCUMENTS 46
10.1 Seizing documents 46
10.2 Returning documents to other government departments 46

11. THE EFFECT OF REMOVAL ORDERS 47
11.1 The Minister's consent for re–entry 47
11.2 The Minister's consent and reimbursement of removal costs 47
11.3 Re–entry for an appeal hearing 47
11.4 Re–entry of family members 47
11.5 Re–entry following denial of entry elsewhere 47
11.6 Re–entry during stay of execution 48

APPENDIX A
SAMPLE OF IMM 5238 (01–93) B – DEPARTURE ORDER 49

APPENDIX B
SAMPLE OF IMM 1215 (08–92) B – DEPORTATION ORDER 51

APPENDIX C
SAMPLE OF IMM 1214 (12–92) B – EXCLUSION ORDER 53

APPENDIX D
RECIPROCAL ARRANGEMENT BETWEEN THE CEIC AND THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE, FOR THE EXCHANGE OF DEPORTEES BETWEEN THE UNITED STATES OF AMERICA AND CANADA 55

1. Requests and Notifications: 55
2. Notice of Return of Citizens, Nationals or Aliens: 55
2.1 Citizens or Nationals 55
2.2 Aliens 56

3. Consent to Return Aliens: 56
3.1 The alien was admitted to the receiving country for permanent residence and: 56
3.2 The alien was not admitted to the receiving country for permanent residence but: 56
4. Transportation and Subsistence: 56
5. Voluntary Departure: 57
6. Ports of Entry: 57
7. Official Records and Privacy Consideration 58
8. Consultation and Amendment Provisions: 58
9. Termination Provision: 58
10. Definitions: 59
11. Effective Date: 60

APPENDIX E
SAMPLE OF IMM 56 (12–92) B – CONFIRMATION/CERTIFICATE OF DEPARTURE 61

APPENDIX F
PREROGATIVE WRITS 63

1. Habeas Corpus 63
2. Certiorari 63
3. Mandamus 63
4. Prohibition 63

APPENDIX G
SAMPLE OF IMM 419 EP–P (12–92) B – ORDER OF THE DEPUTY MINISTER OF EMPLOYMENT AND IMMIGRATION (UNDER SECTION 105 OF THE IMMIGRATION ACT) 65

APPENDIX H
NHQ REFERRALS/TRAVEL DOCUMENTS FORM 67

APPENDIX I
SAMPLE OF IMM 476 (2–81) B – DETAINED STICKER 69

APPENDIX J
SAMPLE OF IMM 1216 (12–92) B – NOTICE OF LIABILITY TO CONVEY AND/OR PAY REMOVAL COSTS 71

APPENDIX K
SAMPLE OF IMM 1253 (08–92) B – NOTICE OF REMOVAL AND PROFILE 73

APPENDIX L
OVERSEAS INVESTIGATION AND CONTROL OFFICES 75

APPENDIX M
THE STATUS OF PERSONS LIVING IN U.S. TERRITORIES AND PROTECTORATES 81

1. U.S. citizens (non–voting) 80
2. U.S. nationals 80
3. non–U.S. citizens/non–U.S. nationals 80

APPENDIX N
SAMPLE WORDING OF A LETTER FOR THE RETURN OF NON–RESIDENT ALIENS **81**

APPENDIX O
SAMPLE OF IMM 1443 (06–87) B – NOTICE OF ISSUANCE OF MINISTER'S PERMIT **83**

APPENDIX P
SAMPLE OF IMM 1217 (12–92) B – REJECTION ORDER UNDER SECTION 13 OF THE IMMIGRATION ACT **85**

APPENDIX Q
SAMPLE OF IMM 1237 (12–92) B – DIRECTION TO RETURN TO THE UNITED STATES (UNDER SUBSECTION 20(2) OF THE IMMIGRATION ACT) **87**

APPENDIX R
SAMPLE OF IMM 1238 (12–92) B – DIRECTION TO RETURN TO THE UNITED STATES (UNDER SUBSECTION 23(5) OF THE IMMIGRAITON ACT) **89**

APPENDIX S
STATE VITAL STATISTICS OFFICES **91**

APPENDIX T
SAMPLE OF IMM 421 (03–90) B – ORDER FOR DETENTION **97**

APPENDIX U
SAMPLE OF IMM 1226 (2–92) B – DOCUMENT ENVELOPE **99**

APPENDIX V
TRANSPORT CANADA NOTAM: RECOMMENDED PROCEDURES FOR THE CARRIAGE OF FIREARMS AND PASSENGERS UNDER ESCORT ABOARD CANADIAN REGISTERED AIRCRAFT **100**

A. RECOMMENDED PROCEDURES FOR THE CARRIAGE OF FIREARMS ABOARD CANADIAN REGISTERED AIRCRAFT 100
1. Procedures for Law Enforcement Authorities 100
1.1 Each law enforcement authority should establish procedures to ensure the following: 100
2. Procedures for Armed Peace Officers 100
2.1 A peace officer authorized to carry a firearm aboard a particular flight shall: 100
3. Procedures for Air Carriers 100
3.1 The air carrier shall establish procedures to ensure that: 100
B. RECOMMENDED PROCEDURES FOR THE CARRIAGE OF PASSENGERS UNDER ESCORT ABOARD CANADIAN REGISTERED AIRCRAFT 101

1. Introduction 104
1.1 Definitions: 104
1.2 Policy: 104
2. Conditions for Carriage of Passenger(s) Under Escort BEFORE Boarding Aircraft 104
2.1 Notice to Responsible Representative of Air Carrier 104
2.2 Assessment as to Risk to Security 104
2.3 Interline Transportation 104
2.4 Required Number of Escorts, by Security Rating 104
2.5 Right to Limit Number of Passengers under Escort 104
2.6 Search of Passengers under Escort 104
2.7 Incapacitating Gas–Generating Devices 104
2.8 Restraining Devices 105
2.9 Hijacking or Other Illegal Acts 105
2.10 Pre–Boarding 105
2.11 Possession of Documentation 105
2.12 Potential Weapons 105
3. Conditions for Carriage of Passenger(s) Under Escort AFTER Boarding Aircraft 105
3.1 Seating priorities for the Escorting Officer and passenger under escort are to be as follows: . 105
3.2 The Escorting Officer: 105
4. Procedures 105

APPENDIX W
REGIONAL DIRECTORS/MANAGERS,
INVESTIGATION AND CONTROL OFFICES 107

1. INTRODUCTION

1.1 What this chapter is about

This chapter describes how to remove persons from Canada who contravene the *Immigration Act* and its regulations.

As an expulsion officer, you plan and direct the post–inquiry arrest, detention, escort and removal of deportees from Canada, and administer the *Reciprocal Arrangement between the Canada Employment and Immigration Commission and the United States Immigration and Naturalization Service, Department of Justice, for the Exchange of Deportees between the United States of America and Canada* (the Reciprocal Arrangement).

1.2 Policy intent

The Canadian immigration policy aims for removals are:

- to maintain and protect public order, health and security in Canada
- to remove alien criminals from Canada expeditiously, and
- to ensure that all the legal rights accorded to persons being removed are observed, and that their removal is conducted effectively, sympathetically and equitably.

2. AUTHORITY TO REMOVE FROM CANADA

2.1 Removal orders

A **removal order** can be a departure order (form IMM 5238; see APPENDIX A), a deportation order (form IMM 1215; see APPENDIX B), or an exclusion order (form IMM 1214; see APPENDIX C):

a) a **departure order** is a removal order made by a senior immigration officer (SIO), by an adjudicator or by the Immigration Appeal Division of the Immigration and Refugee Board (IAD), and includes a **conditional departure order** that has become effective under A28(2) and A32.1(6) [A27(4), A32(7), A73(2)(a), A74(1)(a) and A74(3)(6)].

Note: References to the Immigration Act, as amended, appear in the text in this chapter with an "A" prefix followed by the section number, as here: the Act, subsections 28(2), 32.1(6), 27(4) and 32(7).

A person against whom a departure order has been made must appear before an immigration officer (IO) to verify his or her departure and receive a certificate of departure [A32.01]. When a certificate of departure is not issued within the applicable period of time prescribed by s. 27 of the *Immigration Regulations*, the departure order is deemed to be a deportation order [A32.02(1)].

For factors affecting the time period when a departure order becomes effective, see section 4.3 below.

b) a **deportation order** is a removal order made by an adjudicator, by the Minister or by the IAD, and includes both a **conditional deportation order** that has become effective under A32.1(6) and a **departure order that is deemed to be a deportation order** under A32.02(1) [A32(2), A32(5) or A32(6), A37(5) or A37(6), A73(2)(a), A74(1)(a) and A74(3)(b) or A74(3)]. A deportation order bars admission to Canada indefinitely unless an appeal from the order has been allowed or the Minister grants written consent to return [A55(1)]. In the case of a departure order that was deemed to be a deportation order, to gain admission to Canada the person must not only obtain the written consent of the Minister but also reimburse the Canadian government for removal costs incurred in deporting the person [A55.1].

c) an **exclusion order** is a removal order made by an SIO, an adjudicator or the IAD against a person who is seeking admission to Canada [A23(4), A32(5), A73(2) or A74(1) or A74(3)]. An exclusion order bars admission to Canada during the 12–month period immediately following the day on which removal from Canada takes place, unless an appeal from the order is allowed or written consent to return is granted by the Minister, except for a person who has claimed to be a Convention refugee [A55(2)].

A **conditional removal order** is a conditional departure order or a conditional deportation order made in cases where a refugee claimant is found eligible to have the claim determined by the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board. Conditional departure orders are made against port–of–entry and inland cases. At the port of entry (POE), a conditional departure order is made where, but for a positive eligibility determination, an exclusion order would have been made.

A removal order is an effective order. A conditional removal order becomes an effective order when:

- a claimant withdraws the claim to be a Convention refugee [A28(2)(a), A32.1(6)(a)]
- the CRDD declares the claim abandoned and the claimant has been so notified [A28(2)(b), A32.1(6)(b)]
- the CRDD determines the person not to be a Convention refugee and the claimant is so notified [A28(2)(c), A32.1(6)(c)]
- the claimant is determined not to have a right to remain in Canada and has been so notified [A28(2)(d), A32.1(6)(d), A46.07(1.1) or A46.07(2), and A4(2.1)], or
- an SIO determines that the person is not eligible to make a claim to be a Convention refugee and the person has been so notified [A32.1(6)(a.1)].

The execution of an effective order may under certain circumstances be stayed. For further information on stays, see section 5.3 below.

2.2 Departure notices

Under s. 113 of the *Transitional Provisions* of the *Immigration Act*, as amended, a departure notice issued to a person before February 1, 1993 shall be deemed to be a deportation order on the later of the expiration of 90 days after the day the section comes into force and the period specified in the departure notice for the person to leave Canada.

2.3 Service of orders

Although A47 states that a removal order or a copy shall be served on the person against whom it is made, rule 22 of the *Adjudication Division Rules* provides that only a copy of the order or departure order shall be served personally on the person concerned and his or her counsel, if any.

2.4 Execution of orders

A removal order shall be executed as soon as reasonably practicable [A48], subject to the stay–of–execution provisions of A49 and A50 and the deferral policy on applications submitted under s. 18.1 of the *Federal Court Act* and other legal proceedings (see section 5.3 below).

No removal order becomes invalid by reason of any lapse of time between its making and its execution [A51].

A removal order shall be deemed not to have been executed if the person is not granted lawful admission in any other country [A54(1)]. This provision clarifies the status of people who are removed from or otherwise leave Canada, and who are obliged to return because they have been denied admission elsewhere. Persons coming within A54(1) are not readmitted to Canada, but resume their presence here under the original removal order until it can be executed (see A12(2) and A14(1)(c)).

2.5 Types of removals

You deal with four types of removals:

- voluntary removal
- departure orders
- exclusion orders, and
- deportation orders.

Departure, exclusion and deportation order cases can be released or detained. You must remove detained cases as expeditiously as possible. You should take care to determine if there are any factors that would prevent you from effecting a removal order. You should pay particular attention to the time periods for detention reviews of a detained person, because of the possibility of release. If the person is not released by an SIO and the person's removal does not take place within 48 hours, the person is entitled to be brought before an adjudicator as soon as practicable for a review of the reasons for detention. Should the detention be continued, the person is entitled to be brought before an adjudicator at least once during the seven days immediately following the expiration of the 48–hour period, and thereafter at least once during each 30–day period following each previous review [A103(6)].

It is important for you to ensure that case presenting officers and enforcement detention officers are well aware of the progress and problems (if any) in arranging a detained removal, so that they can make proper explanations at a detention review and can present up–to–date reasons for a request for continued detention.

3. VOLUNTARY REMOVAL

A person against whom an exclusion order or a deportation order is made may be allowed to leave Canada voluntarily to a country of the person's choice, unless the Minister directs otherwise [A52(1)].

3.1 Appropriate circumstances

As the officer responsible for removal arrangements, you should take the initiative and suggest voluntary removal if circumstances warrant such action. This will allow the person concerned the dignity of making his or her own travel arrangements, and at the same time relieve the Commission of some of the removal costs. Voluntary removal is clearly not an option if you consider the person to be a danger to the public, or the person is unable or unwilling to leave Canada at his or her own expense.

3.2 Time limits

You should grant persons who are departing voluntarily a reasonable period of time to make arrangements for travel documents, transportation, disposal of property, and so forth. You should use your own judgment; under normal circumstances two weeks should be enough time for persons to make proper arrangements.

3.3 The effect of voluntary removal

The term "voluntary removal" is restricted to exclusion order and deportation order cases. You should not use it in any other context, such as departure order cases (see section 4. below). For removals to the U.S., voluntary removal is called "voluntary departure" under part X of the Reciprocal Arrangement (see APPENDIX D and section 6.3.2. below).

A person can only leave Canada and select the country of destination with the authorization from the Minister that is delegated to you as an expulsion officer. A person who leaves and does not comply with A52 cannot be said to have carried out the removal order [*Bhawan v. Minister of Employment and Immigration*, FCTD, Doc. No. T–1239–87, June 22, 1987; *Mercier v. Minister of Employment and Immigration*, FCTD, Doc. No. T–1512–85, November 17, 1986].

You should counsel a person granted voluntary removal that voluntary removal does not negate the effect of the removal order, and that in a deportation case the person must obtain permission from the Minister before admission will be permitted.

You should notify the person in writing of the date on which he or she is expected to leave Canada, and inform the person that failure to meet the removal date makes him or her liable to arrest under A103. To confirm departure, follow the instructions in sections 3.4 and 3.5 below.

3.4 Voluntary removal arrangements

When you grant a person under an exclusion order or a deportation order the privilege of leaving voluntarily, an officer will:

- counsel the person concerned to settle his or her personal affairs, and to make transportation arrangements to leave within a reasonable time

- give the person an information kit that includes a copy of the exclusion order or deportation order, a confirmation of departure (form IMM 56; see APPENDIX E), and instructions informing the person to report to an IO at a port of exit to have the removal verified
- affix the person's photograph to each copy of the IMM 56
- stamp the photograph and stick transparent adhesive over it
- affix another copy of the person's photograph to the file copy of the order (IMM 1214, IMM 1215), and
- place any remaining copies of the person's photograph on the file.

3.5 Verification of voluntary removal

The person should appear at a POE, where an IO will:

- review the removal documents
- complete part C of the IMM 56 to confirm that the person has physically left Canada
- if a CRU has been involved with the removal, give the CRU's appropriate responsibility code in the *CRU involved* section of the IMM 56
- complete the *Confirmation of Departure* screen in the Field Operational Support System (FOSS) as follows:
  - the *Status Entry* field
  - the *Originating CIC* field, giving the responsibility centre code of the Canada Immigration Centre (CIC) that originated the removal action, and
  - the *CRU* field, if a CRU has been involved with the removal, giving the CRU's appropriate responsibility code
- send the verification to the responsible Central Removal Unit (CRU) or originating CIC, as applicable, and distribute the other copies as indicated by the instructions at the bottom of the form.

Failure to complete the confirmation of departure form and to update FOSS would mean that the removal will not have taken place according to our records. This can create statistical inconsistencies and legal problems when a person is being prosecuted for coming into Canada without the Minister's consent after having been deported.

3.6 Persons wanted for criminal offences or punishment

You must not grant voluntary removal to a person who is wanted in his or her country for criminal offences, or to serve a sentence as punishment. You must ensure that the Act is not used deliberately as a means to evade or frustrate the cause of justice in other countries by allowing voluntary removal to a third country. Nor should you use the Act as a substitute for extradition legislation. Do not grant voluntary removal to fugitives. If the person concerned is wanted for a crime in a country other than the one to which he or she would normally be removed, then you should ask that country's officials if they wish to begin extradition proceedings, and if so, require them to proceed expeditiously.

3.7 The place to which removal is effected

If you have not allowed the person to leave Canada voluntarily, you must remove the person from Canada to:

- the country from which the person came
- the country in which the person last resided permanently before coming to Canada
- the country of which the person is a national or citizen, or
- the country of the person's birth [A52(2)].

If you cannot effect removal to any of those countries because none is prepared to receive the person, then the person may, if the Minister approves, select any other country that is willing to accept him or her within a reasonable period of time [A52(3), A52(4)]. The Minister can also choose another country that will accept the person within a reasonable period of time.

For detailed guidelines on the removal of persons to specific countries, see chapter IC 3.

4. DEPARTURE ORDERS

4.1 Conditions for issuing departure orders

Under certain conditions an adjudicator may issue a departure order to a person instead of making a deportation order [A32(7), A32(2.1)]. A departure order serves as an alternative to deportation in the case of a person in Canada who is found liable to removal on minor grounds.

In certain cases SIOs are also authorized to make departure orders. An SIO must make a departure order against a person if the SIO is satisfied that the person is described in A27(2)(e) by reason of A26(1)(c) or A27(2)(f), A27(2)(h) or A27(2)(k) if the person is not described in any other paragraph of A27(2) [A27(4)].

4.2 Applicable period for issuing a certificate

If the person fails to appear before an IO to have his or her departure verified and no certificate of departure is issued within the applicable period specified in s. 27 of the *Immigration Regulations*, the departure order is deemed to be a deportation order [A32.02(1)].

The applicable period is affected by whether the person is notified in person or by mail that the departure order is effective. If the person is notified in person, the applicable period is 30 days after the day on which the order was issued or became effective, except for cases under ss. 27(1)(a), 27(1)(b), 27(1)(c) and 27(2) of the *Immigration Regulations*. For information on the exceptions see section 4.3 below.

If notification that the order is effective is sent by mail, the applicable period is 37 days after the day on which the notification was mailed, which allows 7 days for delivery of the notice [A2(4)].

4.3 Factors that affect the applicable period for issuing a certificate of departure

When you or an IO are dealing with a departure order, you should be aware that several factors may cause variations in the time period within which a certificate of departure must be issued.

The time period allowed a person to present himself or herself to an IO at a POE for verification of departure and to receive a certificate of departure is affected by the following factors:

a) **stays, appeals and judicial review**: if the departure order was stayed, the applicable period is 30 days after the day on which the stay is no longer in effect [*Immigration Regulations*, s. 27(1)(a)]; see section 5.3.1. below on statutory stays, and section 5.3.2. on applications for stays.

b) **moratorium**: if the Minister has declared a moratorium on the removal of all nationals of the country of which the person is a national, the person has 30 days from the date the moratorium has been lifted to effect departure [*Immigration Regulations*, s. 27(1)(b)].

c) **other proceedings and orders**: for the effect of other proceedings and orders, such as those in A50(1)(a) and A50(1)(b) [*Immigration Regulations*, s. 27(1)(c)], see section 5.3.3. below.

d) **post–determination refugee claimants in Canada (PDRCC) class review**: every refugee claimant who has been determined not to be a Convention refugee by the CRDD is entitled to a review to determine if the claimant falls within the PDRCC class [*Immigration Regulations*, ss. 11.4, 27(2)(a) and 27(2)(b)].

The review will take place three weeks after the claimant has been sent written notification of the negative CRDD determination. The three–week period allows for a seven–day mailing period for notification [A2(4)], plus 15 days for submissions for the PDRCC review [*Immigration Regulations*, s. 11.4(3)].

If the refused refugee claimant applies for leave to begin an application for judicial review, the 15–day submission period begins after a negative Federal Court decision on the leave application, or after a refusal of the appeal if leave is granted. The post–claim determination officer (PCDO) does not make a PDRCC decision until after the submission period has expired.

For a negative PDRCC review, the departure order becomes effective after the seven–day notification period [A2(4)] expires.

e) **detention**: detention in itself does not affect the time period for departure unless the person is in detention at the end of the applicable period. If the person is still in detention under the Act at the expiry of the 30–day period, the departure order cannot be deemed to be a deportation order [A32.02(3)].

If none of these factors applies, the person may be issued a departure order information kit.

4.4 Departure order information kit

When an SIO, adjudicator, the CRDD or Case Management Branch at National Headquarters notifies the person that the departure order is effective, an IO will:

- request that the person provide eight passport–size photographs
- affix one copy of the person's photograph to the client copy of the confirmation of departure (IMM 56)
- stamp the photograph and stick transparent adhesive over it (this lessens the chances of tampering, and makes microfilming the order easier)
- affix a copy of the person's photograph to the other four copies of the IMM 56
- place the remaining three copies of the person's photograph in the file, and
- give the person a departure order kit that includes instructions for the person about verifying departure, the consequences of not verifying departure, the consequences of a deemed deportation under A32.02(1), procedures for receiving a certificate of departure, and the addresses and hours of the POEs the person must use.

4.5 Verifying compliance with departure orders

Only one condition must be met before compliance with a departure order occurs: within the prescribed time period the person concerned must appear or be brought before an IO at a POE, who verifies the person's departure from Canada by:

- verifying the departure documents, and
- completing the IMM 56, which serves as a certificate of departure.

Following local procedures, the POE will verify that the person has physically left Canada. For procedures on distributing a completed IMM 56 and updating FOSS, see section 3.5 above.

4.6 Failure to comply with a departure order

If a person fails to depart by the applicable date, depending on regional procedures and the circumstances of the case you or an IO must:

- initiate a priority investigation
- if the person is not located, issue a warrant
- initiate entry into the Canadian Police Information Centre (CPIC), following your local office's procedures
- arrest the person for removal
- detain the person, and
- deport the person.

The next three examples illustrate actions you should take if a person was not granted lawful admission to another country and therefore has not complied with the departure order.

4.6.1. Persons not authorized to be in another country

The person concerned leaves Canada, and an IO issues a certificate of departure within the allotted time. The person is not granted lawful permission to be in any other country and returns to Canada under A14(1)(c):

a) under A12(2), if a person leaves Canada and then seeks to return to Canada (whether or not the person was granted lawful permission to be in any other country), the person shall be deemed to be seeking to come into Canada

b) the examining officer determines that the person being examined is a person to whom a departure order has been issued and who has otherwise departed from Canada in compliance with that order, but has not been granted lawful permission to be in any other country

c) the officer must allow that person to come into Canada under A14(1)(c), but does not give status to the person, and

d) the departure order remains in force and can be executed like any other removal order. Under A54(1) the departure is considered not to have been effected and the person has the remainder of the 30–day time period to depart to any other country. Under A103(2) the person is arrestable for removal if he or she fails to leave within the applicable period.

4.6.2. Departure after the date specified

The person concerned departs Canada after the applicable period but is not granted lawful permission to be in any other country:

- under A54(1) the person is not considered to have been deported, although the departure order has in fact changed to a deportation order [A32.02(1); *Immigration Regulations*, s. 27(1)]
- under A12(2), if a person departs Canada and afterwards seeks to return to Canada, whether or not he or she was granted lawful permission to be in any other country, the person is deemed to be seeking to come into Canada
- the IO may:
  - under A14(1)(c), allow the person to come into Canada but not report the person under A27(2)(h) because the person is not considered to be removed, and
  - detain the person for removal *if* the IO has reasonable grounds to believe the person will not appear for removal, in that the person failed to effect his or her own removal under the original departure order that has now been deemed to be a deportation order.

4.6.3. Unlawful return to Canada

The person concerned leaves Canada by verifying his or her departure, receives a certificate of departure, goes into another country without lawful permission, and comes back into Canada by unlawful means:

- the person has not effected his departure under A54(1), and
- the person may be arrested and detained for removal under A103(2)(b).

5. REMOVAL ARRANGEMENTS TO ALL COUNTRIES OTHER THAN THE U.S.

5.1 Responsibilities of CRUs and inland offices

Chiefs of CRUs or CIC managers are responsible for making removal arrangements for:

- persons ordered deported at other than POEs, and
- persons ordered deported or excluded at POEs, and who were allowed to await the outcome of an appeal or application for judicial review in Canada.

Expulsion officers in the CRUs are responsible for all overseas removals and escorts, except in cases where there is a direct flight to the final destination, for which expulsion officers in the CICs are responsible. Expulsion officers in CRUs also provide guidance to local CICs on document procurement, special procedures, and escort assistance.

5.2 Responsibility for port–of–entry cases

The responsible CIC (or CRU in some regions) makes removal arrangements for port–of–entry cases. The CIC or CRU must immediately return persons residing or sojourning in the United States or St. Pierre and Miquelon, and against whom the removal order was made as a result of a report under A20(1), despite any appeal or leave application for judicial review that may have been entered.

The CIC or CRU must remove persons who are from a non–contiguous territory, and who do not or cannot enter an appeal or application for judicial review. Use the first available transportation.

5.3 Legal impediments that may stay removal

5.3.1. Statutory stays

Subject to two exceptions, A49(1) provides for a stay of execution of a removal order in the following circumstances:

a) if a person has a right of appeal to the Immigration Appeal Division (IAD), a stay must be granted for 30 days from the day on which the order is served on the person (if the order was not served in person, service by prepaid mail is deemed to be effected 7 days after the day on which the order was mailed) [A2(4)], and if an appeal is made, until the final disposition of the appeal [A49(1)(a), A49(1)(b); *IAD Rules*, rule 6].

b) if a person who has been determined by the CRDD not to be a Convention refugee, or a person's appeal from a removal order has been dismissed by the IAD:

   i) and that person applies to the Federal Court—Trial Division for leave to commence an application for judicial review or signifies in writing to an IO an intention to file such an application, a stay must be granted until the application for leave has been heard and disposed of, or the time normally limited for filing an

application for leave has elapsed. Where leave is granted, a stay remains in effect until the judicial review has been heard and disposed of [A49(1)(c)(i)]. The person must apply for leave within 15 days after the day on which the applicant is notified of the order or decision or becomes aware of the other matter [A82.1(3)].

ii) and the person files an appeal to the Federal Court—Appeal Division (the Federal Court of Appeal) on a matter that the Federal Court—Trial Division has certified to be "a serious question of general importance" [A83(1)], a stay must be granted until the appeal has been disposed of. The appeal must be filed within 15 days of the pronouncement of the judgement [A83(2)]. In certain circumstances this filing time may be extended by a judge of the Federal Court—Trial Division under A83(3)[A49(1)(c)(ii)].

iii) and that person appeals from the Federal Court of Appeal to the Supreme Court of Canada [A49(1)(c)(iii)], a stay must be granted until the application for leave to appeal has been disposed of or the time allowed for filing an application has lapsed or where leave to appeal is granted until the appeal has been disposed of.

This stay provision does not apply to persons who have been ordered removed for criminal convictions [A49(1)(d)] or have been found not to have a credible basis to their refugee claim by the CRDD [A49(1)(f)].

c) the person has claimed to be a Convention refugee, *or* the person's appeal has been dismissed by the IAD, *and* an adjudicator has determined that the person is described in A19(1)(c), A19(1)(c.1), A19(1)(c.2), A19(1)(d), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k), A19(1)(l), A19(2)(a), A19(2)(a.1), A19(2)(b), A27(1)(a), A27(1)(a.1), A27(1)(a.2), A27(1)(a.3), A27(1)(d), A27(1)(g), A27(1)(h) or A27(2)(d). In these circumstances the removal is stayed for seven days from the date of the order, or in the case of a conditional order, from the date upon which the removal order becomes effective, whichever is later. If the person agrees to removal before the expiry of the seven–day period, the removal order may be executed [A49(1)(d)].

d) the person has been determined not to be eligible to have a claim to be a Convention refugee referred to the CRDD. In this case the execution of the removal order is stayed until seven days have elapsed from the time the order was made or became effective, whichever is later, unless the person agrees that the removal order may be executed before that seven–day period expires [A49(1)(e)].

e) the person has been determined under A69.1(9.1) not to have a credible basis for a claim to be a Convention refugee. In this case the removal order is stayed until seven days have elapsed from the time the order became effective, unless the person agrees that the removal order may be executed before that seven–day period expires [A49(1)(f)].

The two exceptions to these stay provisions are:

a) a person residing or sojourning in the United States or St. Pierre and Miquelon, and on whom the removal order is made as a result of a report under A20(1) only. This person will be removed from Canada to the United States or St. Pierre and Miquelon to await the results of the litigation [A49(1.1)(a)].

b) a person who has been determined to be ineligible to make a claim to be a Convention refugee by reason of A46.01(1)(b), and who is to be removed to a country with which the Minister has entered into an agreement under A108.1 for sharing the responsibility for examining refugee claims [A49(1.1)(b)].

5.3.2. Applications for stays of removal

It is departmental policy to defer removal if the person concerned makes an application to the Federal Court for a stay of removal. In these cases, removal is deferred until the application for a stay is disposed of.

Expression of an intention to file an application for a stay is not adequate to prevent removal.

Removal should be deferred:

- when the person concerned or counsel present an IO with a copy of a stay application, or
- when a Department of Justice lawyer informs your regional litigation co–ordinator or your manager that the person concerned has filed an application.

An application for a stay may be disposed of:

- by the court granting the stay
- by the Minister settling the application for a stay by formally undertaking not to remove, or
- by the court dismissing the application for a stay.

Because stay applications are heard almost immediately, removal arrangements should continue and the case monitored carefully for a disposition. If the stay application is refused, you can effect removal.

If you have any doubts concerning a stay application, contact your regional litigation co–ordinator or the Chief of the Appeals Section at National Headquarters (tel. 819–953–7328) for guidance.

5.3.3. Effect of other proceedings or orders

You should contact the regional Department of Justice representative to determine that no outstanding legal proceedings exist that would prohibit removal, if there is any doubt in your mind.

You must not execute a removal order if the execution would result in a violation of any other order made by any judicial body or officer in Canada [A50(1)(a)]. This applies to prerogative writs and other court orders directed against the Commission to prevent removal. For further information on prerogative writs, see APPENDIX F.

Other types of orders that do not directly order the Commission not to remove a person can also fall under A50(1)(a). These include a judicial interim release order, a promise to appear, a recognizance, an undertaking, a summons, a subpoena, a notice to appear, or a family court order that children not be removed from the court's jurisdiction. In other words, any order that requires the presence of the individual before the court at a designated time, date and place falls under A50(1)(a).

You may not remove an accused person who is subject to a judicial interim release order unless the Crown has stayed or withdrawn the charge or charges. The judicial interim release order need not include a phrase that

the accused is ordered to stay within the jurisdiction. You will have to contact the provincial or federal Crown attorney in carriage of the file, and advise him or her of the necessity of staying or withdrawing the charge to facilitate removal. If the charge is fairly minor, the Crown will probably not have any problem with staying or withdrawing the charge.

Paragraph 50(1)(b) of the Act is reserved for situations where an individual does not have an order requiring his or her presence in a criminal proceeding on a certain day at a certain time: for example, where a witness has not yet been subpoenaed either by the defence or the Crown. The courts have held that A50(1)(b) is reserved for those instances where there is no outstanding order, declaring that the interests of the administration of criminal justice should come before the Minister's power to deport individuals [*Dennis Augustus Williams v. Minister of Employment and Immigration*, FCTD, Doc. No. T–1011–83, October 28, 1983].

When information comes to your attention that a person may be required in court proceedings, you must advise the police officer or Crown attorney in charge of the case that the Commission requires a letter requesting the person's presence in Canada. Forward a report and the letter to your regional Director General or Director, who will decide on behalf of the Minister whether to defer the removal [Instrument I–5].

5.3.4. Inmates of correctional institutions

You must not execute a removal order if the person concerned was, at the time it was made, an inmate of a penitentiary, jail, reformatory or prison or, before the order can be executed, becomes an inmate of such an institution, until the person has completed the sentence or term of imprisonment as imposed, or as reduced by a statute, other law or an act of clemency [A50(2)].

For an inmate under removal order who comes within the terms of the Reciprocal Arrangement, see section 6.1.6. below.

5.3.5. Correctional Service of Canada and provincial correctional authorities

If you receive an enquiry from the Correctional Service of Canada (CSC) concerning the status of a person in custody who may be the subject of removal proceedings, you should send it immediately to the CIC manager in charge of the file. The manager should reply to the CSC as soon as possible, indicating the person's status in Canada and any action taken or proposed.

If the person concerned has been ordered deported and has entered an appeal or other legal proceedings, the appropriate manager should advise the CSC. The manager should annotate the local file at the same time, so that further information will be sent to the CSC as soon as the litigation is decided. The manager should send copies of all correspondence with the CSC to the representative at the address indicated in the original request from the CSC.

The National Parole Board (NPB) is an independent agency which makes decisions on conditional release and pardons for offenders serving sentences greater than two years in length. The NPB will normally refrain from direct contact with immigration authorities for information on an offender's immigration status, and will use the CSC case file as a source of information. Some conditional release decisions are made with a review of

the offender's file rather than with a formal NPB hearing. At hearings, the CSC Case Management Officer who maintains the offender's case file is present to provide information relevant to the decision on conditional release. IOs who require information on an offender in the federal correctional system, or who need to provide the CSC with information relevant to the offender's removal or form of conditional release, should contact the Case Management Officer in the institution where the offender is serving his or her sentence.

For an inmate serving a sentence of less than two years, contact the records department of the provincial institution where the offender is serving his or her sentence to deliver an order to detain (form IMM 419) or to obtain a release date.

5.4 Removing paroled persons

Guidelines and instructions will be forthcoming on intervention and information–sharing by immigration authorities with the CSC, for presentation to the NPB, when an offender applies for day parole. See also sections 5.4.1., 5.4.2. and 5.4.3. below.

5.4.1. Persons eligible for parole

Officials who influence the granting of parole should be aware of the immigration status of the person concerned. The IO responsible for the case provides information to the relevant correctional authorities regarding detention status, pending dates of inquiry, and removal orders. In return, correctional authorities notify immigration authorities of the dates of eligibility for day parole, full parole and statutory release, the date that incarceration commences, and the date that the warrant of committal expires; they should also notify immigration authorities when an offender is released on day parole, full parole, statutory release or any other form of release (for example, work release, escorted and unescorted temporary absences, and parole by exception for various circumstances, including severe illness, excessive hardship, an order under the *Extradition Act* or an order under the *Fugitive Offenders Act*).

If an offender is the subject of an immigration detention or removal order, the CIC responsible for the case must notify the CSC or the provincial correctional authorities by serving a copy of the removal order or order for detention issued by the Deputy Minister or the Deputy Minister's delegate (form IMM 419; see APPENDIX G) on the governor, warden or superintendent of the institution concerned. This order directs the institution, at the expiry of the sentence of the person named in the order, to detain the person and to deliver him or her to an IO to take into custody [A105]. The institution must notify immigration authorities when the person's sentence expires so that immigration authorities can take custody. Transfer of the offender to another detention facility may or may not be required, subject to regional practice. You should monitor cases of this nature closely so that you can effect the person's removal as soon as possible after the person comes under immigration detention. If immediate removal is not possible, the required immigration detention reviews must take place.

5.4.2. Persons released on full parole or statutory release

Section 128 of Part II of the *Corrections and Conditional Release Act,* and A50(2), together allow for the immediate removal of persons at the completion of the term of imprisonment or sentence, which includes persons released on full parole or subject to statutory release.

Full parole allows the offender to serve the remainder of the sentence under supervision in the community. Most offenders may apply for release on full parole after completing one–third of their sentences of imprisonment.

Statutory release is the requirement that most federal offenders be released after serving two–thirds of the sentences imposed. Statutory release is a non–discretionary system of release and replaces the type of release known as mandatory supervision. Offenders returning to the community on statutory release are subject to the supervision of parole officers, under conditions similar to those applying to offenders released on parole. Although the NPB does not have the authority to grant statutory release because it is automatic, the NPB may add conditions to those imposed by law on all offenders.

You should remember that the law permits judges to require violent offenders and serious drug offenders to serve a greater amount of time before they may become eligible for parole if the determination is made at the time of sentencing. Parole eligibility is also different for offenders serving life or indeterminate sentences. All forms of conditional release may be suspended, revoked or cancelled by the NPB.

5.4.3. Persons released on day parole

You must not remove an offender who is granted day parole, because he or she is still considered to be an inmate of the institution. Day parole provides an offender with an opportunity to participate in community–based activities, such as employment, schooling, training, and alcohol or drug rehabilitation programs, which assist in the reintegration of the offender into society. An offender on day parole must return nightly to the institution or a halfway house unless authorized by the NPB. Most offenders may apply for day parole six months before their full parole eligibility date.

5.5 Removal of refugee claimants who have been found not to be Convention refugees

If the person concerned has made a refugee claim and has received a negative determination by the CRDD, you should ensure that a PCDO has reviewed the case to determine whether the person falls within the PDRCC class, and that the PCDO has rendered a negative decision. In a case where a PCDO has consulted the Case Management Branch, confirm that a final decision has been made before you remove the person. It is important that the PCDO consistently apply and complete the PDRCC review process. If it appears incomplete, you should refer the case back to the PCDO for review, or consult the Case Management Branch.

5.6 Removal advice to the person concerned

You should advise a person under a removal order of the date on which the removal is to take place. The usual practice is to hold a pre–removal interview, during which you can decide whether the person is likely to present himself or herself for removal, whether or not to arrest the person for removal [A103(2)(b)], and whether or not to seize travel documents under A110(2)(b) and (c).

If the person is detained, follow your local arrangements for advising the person.

5.7 Humanitarian and compassionate applications under A114(2)

A review under A114(2) may take place at any point in the enforcement process. The applicant is entitled to a review of humanitarian and compassionate grounds as they apply to his or her circumstances, on payment of the appropriate cost–recovery fee, accompanied by a Request for Visa Exemption/Application for Permanent Residence (form IMM 5001) and a Request for Consideration by the Governor in Council pursuant to Subsection 114(2) of the Immigration Act (form IMM 1454). You do not have to delay removal to give a person the opportunity to submit an A114(2) application. If possible, these applications should be reviewed while the applicant is still in Canada.

If an officer holding delegated authority makes a negative decision, you must remove the person. If the decision is positive, an IO should process the applicant for permanent residency in Canada in accordance with local office procedures.

5.8 Travel documentation

5.8.1. Travel documents

Your CIC or CRU will get passports and travel documents for persons under removal order through local consulates agreeable to issuing these documents, or through high commissions and embassies in Ottawa. *Diplomatic, Consular and Other Representatives in Canada*, an annual publication of External Affairs and International Trade Canada, is useful for contacting foreign missions; it is available from Canada Communications Group — Publishing, Ottawa K1A 0S9.

Detailed procedures for contacting certain foreign embassies and consulates are included in chapter IC 3. These procedures are privileged internal communications.

If a country does not have an embassy or consulate in Canada, you may approach its embassy in the United States directly with a request for a travel document. If you encounter difficulties, refer your request to your manager or a delegate, who will consider alternatives. Your manager may refer your request to the Removals Section, Enforcement Branch, at National Headquarters to take the necessary steps.

Each foreign mission requires a variety of information and documentation. Some missions insist on completed application forms, while others may only require a letter. Contact the mission concerned to find out what information is necessary. The mission can send you application forms if

they are required. The most important facts you need to establish are the identity and citizenship of the person. If you do not have these facts, difficulties occur and detention may be prolonged.

All requests for travel documents should normally include the following information and documentation:

- the person's complete name, date and place of birth, and any other antecedent particulars
- names, places and dates of birth and the present address of parents, and similar details, where known, of other family members or close relatives residing in the country concerned
- the person's last place of residence in the country of citizenship
- the person's date of arrival in Canada and status granted
- the reason for removal, in narrative form. You should quote sections of the Act and its regulations. When deportation is based on criminality, provide full details of all known convictions, including dates, places of convictions, and sentences imposed
- a complete physical description of the person
- two passport–size photographs, one to be certified on the reverse side to the effect that it is a true likeness of the person concerned, and
- an expired passport, seaman's identity card, or other books or documents that might help in establishing the citizenship of the person concerned.

If your office does not obtain a travel document within two weeks for a detained case, or within four weeks for a non–detained case, your manager or CRU chief should send a request to the Removals Section at National Headquarters on an NHQ Referrals/Travel Documents form (see APPENDIX H). The Removals Section will enter the information on the form into a data base, contact the appropriate embassy or consulate, or consult the International Services Group, and inform your office of the case's status.

5.8.2. Disposition of travel documents

If you get a travel document from a foreign mission and subsequently locate the person's original passport before departure, as a matter of courtesy you should contact the mission by telephone to check which document is to be used. This gesture of co–operation may help in future requests for documents.

If you have used the services of the Removals Section at National Headquarters, you should continue to go through them rather than directly to the mission. If you obtain documents after your manager refers the case to the Removals Section, you should inform the section by facsimile (819–953–8119). If you end up with two sets of travel documents, advise the foreign mission as a matter of courtesy.

5.8.3. Travel documents for detained cases

A detained person awaiting inquiry, appeal or other legal proceedings may not possess travel documents, which could delay execution of the removal order if the order is confirmed by the IAD or the courts. To avoid prolonged detention of the person, where possible you must make arrangements to obtain travel documents pending the inquiry, appeal hearing or other litigation.

When you correspond with a foreign mission, you should make three points clear:

- that a removal order may be issued or, if issued, is under appeal or other action
- that you are undertaking the arrangements to get a travel document solely to reduce the period of detention to a minimum, should removal be ordered or directed, and
- you will immediately inform the authorities if a removal order is not issued, if the IAD does not direct removal action, or should the person concerned otherwise successfully challenge the validity of the order.

Some embassies and consulates will release travel documents without travel itineraries. Where possible, apply in advance for a travel document.

You must give top priority to any correspondence pertaining to a detained case. Either put a *DETAINED* sticker (IMM 476; see APPENDIX I) on each piece of correspondence that you send to National Headquarters and to the IAD to alert them to the urgency of the case, or note in the correspondence that the person is detained.

You should make prompt and reasonable efforts to find out the detainee's citizenship, so that you can acquire a travel document and execute the removal order expeditiously. [see *Cushnie v. Department of Employment and Immigration*, Que. Sup. Ct., Doc. No. 500–05–003698–881, April 22, 1988].

5.9 Seizure of documents

An IO at a POE or in Canada may seize and hold any travel or other documents that may be used for determining whether a person may be granted admission or may come into Canada, if the IO believes on reasonable grounds that the seizure is required to facilitate the carrying out of any provision of the Act or its regulations [A110(2)(b)]. The courts have held that search and seizure of documents are not contrary to the *Canadian Charter of Rights and Freedoms* [*Nunes v. Minister of Employment and Immigration*, FCA, Doc. No. A–82–86, June 24, 1986].

In addition, s. 49(1) of the *Immigration Regulations* provides for the retention and return of travel documents seized under A110(2)(b), when the person is granted or allowed to come into Canada and at the time the person is removed from or allowed to leave Canada. This regulation assists removals because it allows for the retention of travel documents until the person is removed or allowed to leave Canada, except where admission to Canada was granted or the person was allowed to come into Canada.

An IO may seize and hold any travel or other documents if the IO believes on reasonable grounds that they have been fraudulently or improperly obtained, or that action is necessary to prevent their fraudulent or improper use [A110(2)(c)]. Return any documents — such as SIN cards — that were obtained by fraudulent or improper means. (see section 10.2 below).

Officers who have reasonable grounds to believe that a passport or other travel document is fraudulent (see chapter IC 3.15), or was fraudulently or improperly obtained, should seize the document. It is important that you consult your manager or supervisor for local procedures on the disposition of the document, because it may be referred to the RCMP and charges under the *Criminal Code* and the *Immigration Act* may be laid.

Section 49(2) of the *Immigration Regulations* provides a rationale for retaining and disposing of improperly used genuine, altered and counterfeit documents seized under A110(2)(b) or A110(2)(c). Depending

on the circumstances, the IO may retain or destroy documents where reasonable grounds exist for believing that the document has been fraudulently or improperly issued, obtained or used and the rightful owner or issuing authority was implicated. The regulation also provides the authority to return the document to the rightful holder or issuing authority where either is known, or to retain or destroy the document where neither is known.

You should not destroy documents without your manager's approval, because they may be needed for court or other purposes.

5.10 Removal without a valid passport or travel documents

5.10.1. Removal without a valid passport

It is often possible for you to effect removal even if the person does not have a valid passport, because most persons do not require a valid passport to enter their country of nationality. An examining officer of the country of nationality will usually grant a citizen admission if the person can convince the officer that he or she is a national of the country. An expired passport, birth certificate, national identification card or any other recognized document that contains personal biographical particulars may be sufficient.

It may prove difficult, however, for the person to travel without a passport through other countries en route to the final destination. Before you remove a person who does not have a valid passport or travel document, you will need the concurrence of the transportation carrier and any country of transit.

5.10.2. Removal with no travel documents

A transportation carrier may accept a person under removal order without documentation if the person is being removed directly back to the country of origin, with no transit points. You should consult your supervisor for further guidance when you feel that this is necessary.

5.11 Visa requirements

When a person will transit a country where a visa is required, you should get the necessary visa before you remove the person from Canada. Some countries require re–entry visas for their nationals being removed back to their countries. For specific requirements, see the *Travel Information Manual* (to order copies of the manual, contact the Editor, P.O. Box 902, 2130 EA Hoofddorp, The Netherlands). You should also contact the embassy or consulate directly.

5.12 Photographs and fingerprints

Paragraphs 110(2)(a) and 114(1)(o) of the Act and s. 44 of the *Immigration Regulations* provide that an IO may take the photographs and fingerprints of the following persons:

- persons who seek admission
- persons who make an application under A9(1), A10, A10.2(1) or A16
- persons who are arrested under A103
- persons against whom a removal order or conditional removal order has been made, and

- persons who claim to be refugees under the United Nations 1951 *Convention Relating to the Status of Refugees*.

You should photograph and fingerprint all removal cases to ease the process of getting travel documents. Embassies and consulates may require this information for transmission to their home countries.

5.13 Medical histories

When a person in an institution or hospital is under removal order, an appropriate official of the institution must establish over his or her signature:

- that the person is fit to travel
- what type of travel accommodation will be required
- whether institutional care in the country of reception will be required, and
- whether a nurse or special escort will be required during the journey.

If you are removing a person who has a mental disorder and is an institutional case, when you request a travel document or authority for the person's return you should give full details to the foreign consulate or government representative concerned. Get these details from the appropriate official of the institution, or the private practitioner in Canada. The details should include the medical history of the person's disability, the treatment used and suggestions for those who may be responsible for subsequent treatment.

If you have not already made arrangements for reception into an institution, the government representative may be able to assist you. If you have made arrangements, you must give this information to the foreign consulate or government representative, and give the receiving institution advance notification of the date and hour of arrival.

Put the medical history in a sealed envelope addressed to the receiving institution or authority in the country of reception. The escort will carry it. If there is no escort, you should mail the medical history directly to the institution, or in exceptional and suitable cases, allow the person or accompanying person to carry it, depending on the circumstances of the case.

If special seating arrangements are required on an aircraft for medical cases, you should ensure that the airline is notified well in advance of the removal so that the necessary seats can be allocated.

5.14 Assistance to leave Canada

Section 120 of the Act provides for financial assistance to persons, other than persons under removal order, to leave Canada at the expense of the Commission. This authority has been delegated to Directors and Directors General, Immigration, and may be used to assist persons — such as husbands, wives, and Canadian–born and other children — who wish to accompany persons under removal order, but who cannot pay for their own expenses without hardship.

5.15 Specific procedures for removing Convention refugees

Section 53 of the Act provides that a person afforded the protection of the United Nations 1951 *Convention Relating to the Status of Refugees* shall not be removed from Canada to a country where the person's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion.

One of the basic principles recognized by the Convention is that refugees should not be removed (*refouler*) to a country where they fear persecution except for reasons involving the safety and security of the receiving state. The Act restricts the option of refoulement to those refugees who the Minister believes pose a danger to the public or to the security of Canada.

You must not return to the country of persecution any person determined to be a Convention refugee, either in Canada or by a visa officer abroad, or a claimant who is found ineligible for consideration of a claim because he or she is recognized as a Convention refugee by a country other than Canada that is a country to which the person may be returned. This protection does not apply if the refugee is described in:

- Al9(1)(c) or Al9(1)(c.1) and the Minister is of the opinion that the person constitutes a danger to the public in Canada [A53(1)(a)], or
- Al9(1)(e), Al9(1)(f), Al9(1)(g), Al9(1)(j), Al9(1)(k) or Al9(1)(l) and the Minister is of the opinion that the person constitutes a danger to the security of Canada [A53(1)(b)].

When an IO has reasonable grounds to believe that a Convention refugee may be described in A53(1)(a) or A53(1)(b), he or she should report this information to the CIC manager. The IO should include with the report:

- the person's criminal record, with certified copies of the record of conviction, if available
- any record of mental illness, including Health and Welfare Canada reports, and psychiatric evaluations or certificates
- security and criminal intelligence reports, if available
- any information concerning episodes of physical violence, and
- the results of communications with third countries regarding the removal of the refugee to these countries.

If the CIC manager and the regional office agree with the report, the responsible officer should forward it to the Director General, Case Management Branch at National headquarters, who then presents the information to the Minister for a decision.

Before you return a refugee to the country from which he or she is fleeing, you must make enquiries to other countries to determine if they will give asylum to the person. You should seek the assistance of the Office of the United Nations High Commissioner for Refugees.

On receiving the final decision, the IO responsible for the case should update the *Removal* screen of the Refugee Module in FOSS.

5.16 Notice to transportation companies

You should inform the transportation companies responsible for removal as soon as a removal order becomes effective. You should also provide background details in your advance information, so that the carriers can conduct any necessary investigations before removal.

If the transportation companies responsible for removal are air carriers, your information should also include, whenever possible, a photocopy of the original airline ticket, inbound ticket numbers, routing to Canada, other carriers involved en route, flight numbers and dates. These details will assist the carriers' acceptance of liability and help them to prorate removal costs to any other carriers involved.

Use the Notice of Liability to Convey and/or Pay Removal Cost (form IMM 1216; see APPENDIX J) to serve notice officially on an airline of their responsibility to convey the person back to his or her country. Once you have established a travel itinerary, an IO presents the IMM 1216 to airline officials for signature.

5.17 Advance notification to airline companies of the profile of persons being removed

The Commission recognizes that the prime responsibilities of every airline captain are the safety of passengers and crew and the security of the aircraft. To aid the captain, in all cases where a person under removal order is being placed on an aircraft you should present a completed notice of removal (form IMM 1253; see APPENDIX K) to the airline's booking officials. You do not need to report persons subject to the departure order provisions, nor those leaving voluntarily.

Commission officials decide whether to escort an individual. If airline officials refuse to carry an unescorted person for whom the Commission is responsible, the Commission will usually provide the escort. An airline will provide an escort for a person whom it is responsible for conveying from Canada. It is vital that you include sufficient background in the *Comments* section of the notice of removal, particularly covering the period during which the person was in immigration custody, to allow the airline to make an informed determination. Never make a statement on the notice such as "In my opinion [or in the opinion of immigration authorities] an escort is not required".

Because escorting some persons is very expensive, you should inform your CRU manager, the Regional Director or Director General, Immigration, or a delegate, of cases in which the airline requires an escort and the individual is being removed at the Commission's expense.

5.18 Notification to foreign governments

From time to time, foreign governments request that they be notified automatically whenever one of their citizens is being removed from Canada. The Canadian government has always refused these requests on the grounds that information in our records is confidential and cannot be released without the consent of the person concerned.

As a general practice, the Canadian government makes information concerning persons under removal order available to foreign governments on a reciprocal basis, but only where it is necessary to ensure the protection of the person (for example, deportees requiring special medical care or other attention) or the protection of the community of destination (for example, deportees who have been convicted of criminal offences). In all other cases, information in our records is confidential and cannot be released without the authorization of the person concerned.

If you receive requests to release information on persons from countries other than the ones with whom we already have an agreement, you should advise them of this policy. If they wish further discussions, you should advise them that their embassy should make a formal request to the International Services Group, Immigration Control (OSC), 3rd floor, Phase IV, Place du Portage, 140 Promenade du Portage, Hull K1A 0J9.

5.19 Notification to posts abroad, the Case Management Branch and the Removals Section of persons under removal order

You should notify posts abroad in the country of destination (and, if applicable, in any country of transit) when you effect these removals, giving them information necessary to advise other government officials and police of returning subjects:

- in all cases of removal under escort, including escorts who are acting on behalf of immigration authorities, such as psychiatric nurses, and police and penitentiary officers, and
- in any non–escorted cases that are contentious, potentially sensitive or could prove to be troublesome, and cases involving criminality or security, including persons found described in A19(1)(c), A19(1)(c.1), A19(1)(c.2), A19(1)(d), A19(1)(e), A19(1)(f), A19(2)(a), A19(2)(a.1), A19(2)(b), A27(1)(a), A27(1)(a.1), A27(1)(a.2), A27(1)(a.3), A27(1)(d), A27(2)(a) for criminal convictions only, or A27(2)(d).

Contentious or sensitive cases may include those where:

- the removal has obvious political overtones
- the person may pose a physical threat to our overseas missions
- the person may be of considerable political interest to our embassy abroad, or
- a person being removed may encounter difficulties in countries he or she will transit while en route to the person's own country because of the particular customs, religion, political beliefs or unsettled political situation of the countries he or she will transit.

The notification should contain:

- the full given name, family name, and aliases of the person being removed
- the person's date of birth, citizenship, place of birth and address in the home country
- a description of the person
- the type and validity of the travel document
- accompanying identification documents
- the date of the removal order
- the violation of the Act under which the removal order was issued
- the proposed date of removal, itinerary and name of the transportation company
- the reason for removal (for example, whether the person was convicted of an offence)

- any criminal or terrorist background
- whether the person has a history of violence
- the attitude of the person concerning his or her removal (for example, whether the person is likely to resist forcibly or take other measures such as last–minute court action to delay removal)
- if a medical case, the nature of the medical condition and the name of the medical escort accompanying the person
- the names and passport particulars of any escort
- arrangements that you have made at the destination for receiving the person
- any assistance that foreign authorities will give during transit, and
- any other information that may be useful.

The notification should stipulate whether or not it is being sent for information only, or if assistance is required in transit or in the country of destination.

When your office sends the notification, include an instruction in its preamble that it must be brought to the attention of the head of the post, the immigration control officer (ICO) and the RCMP liaison officer, if applicable. APPENDIX L contains a list of the office addresses and facsimile and telephone numbers of overseas ICOs. Use facsimile transmission only if the lines of transmission are considered to be and have been proven to be secure. Never send faxes to the Middle East or Africa. You may use a telephone call to a post aboard to give specific information in a last–minute situation, but advance notification is preferable.

Send the notification to the post *at least* seven days before the proposed removal. If this lead time is not possible, you must notify the post by telex or telephone as soon as possible, to avoid the development of embarrassing or difficult situations and to ensure that any necessary assistance will be available. Keep in mind the difference in time zones. Mark any telex "deliver by *give a date*", rather than "routine".

Some of our missions require a specific number of days' advance notice of impending removal arrangements for escorted persons. For example, our High Commissions in Nigeria and Tanzania need not less than one week before scheduled arrival. An escort officer arriving in Nigeria should have a visa; lack of a visa may cause difficulties with Nigerian immigration authorities.

Send an information copy of the notification to the Director, Case Review, Case Management Branch, National Headquarters. For contentious and serious criminal cases, also send copies to the Removals Section, Enforcement Branch at National Headquarters.

In certain cases temporary instructions may exist requiring you to contact Case Management Branch or the Removals Section at National Headquarters before you start removal action. For further details you should contact your manager or supervisor.

If removal is delayed or cancelled, you should notify the post immediately. If necessary, send further information about the specific reasons for the delay and whether further action is required.

5.20 Luggage

You should tell persons under removal order to reduce their effects to the free baggage–allowance limits imposed by transportation companies. Persons may make arrangements to ship excess belongings at their own expense.

6. REMOVAL TO THE UNITED STATES UNDER THE RECIPROCAL ARRANGEMENT

The Commission and the USINS signed an arrangement for the exchange of deportees on July 24, 1987. The *Reciprocal Arrangement between the Canada Employment and Immigration Commission and the United States Immigration and Naturalization Service, Department of Justice for the Exchange of Deportees between the United States of America and Canada* (the Reciprocal Arrangement) fosters a high degree of co–operation and reciprocity in removing deportees expeditiously from our respective countries.

The terms of the Arrangement apply equally to persons under removal order from the U.S. to Canada and from Canada to the U.S.

APPENDIX D reproduces the Reciprocal Arrangement. You should be particularly aware of part X, which contains definitions of specific terms used in the Arrangement.

6.1 Inland cases

6.1.1. Removal under the Reciprocal Arrangement without a letter of consent

The following classes of persons may be returned to the U.S. *without a letter of consent* from the Immigration Attaché at the U.S. Embassy in Ottawa:

a) a person who is given permission to depart Canada voluntarily. For the purposes of the Reciprocal Arrangement only, voluntary departure includes:

   i) a person against whom a removal order has been made and who is granted voluntary departure under A52(1), or

   ii) a person who has been issued a departure order, or

   iii) a person who has become the subject of a direction for inquiry or has been arrested for inquiry and who is given permission to leave Canada voluntarily without going to inquiry.

b) a person who is a citizen or national of the U.S. A national of the U.S. is a person who is not a citizen of the U.S., but who owes permanent allegiance to the U.S. APPENDIX M discusses the status of persons living in U.S. territories and protectorates. The Immigration Attaché at the U.S. Embassy in Ottawa will accept verbal notice of the deportee's return to the U.S. if:

   i) the person can satisfactorily establish the deportee's citizenship or nationality in the U.S. by advising that we have a birth or baptismal certificate, a certificate of naturalization, a valid or expired passport, or other official and verifiable evidence of citizenship or nationality, and

   ii) the deportee does not require institutional care or treatment because of a mental or physical condition.

   If a deportee who is a citizen or national of the U.S. requires institutional care or treatment because of a mental or physical condition (see also section 6.3.1. below), or if you cannot satisfactorily

establish evidence of citizenship or nationality through the documentation just listed, you must send written notice of the deportee's removal to the U.S. to the Immigration Attaché at the U.S. Embassy in Ottawa.

c) an alien to the U.S. (defined in part X of APPENDIX D) who came into Canada directly from the U.S. and who was allowed into Canada under the authority of a Minister's permit, provided that:

   i) you satisfactorily establish that written notice was given to the immigration official in charge of the opposite U.S. port immediately after the permit was issued, confirming that it was issued, and

   ii) you give verbal notice or you establish that verbal notice was given to the official in charge of the U.S. port opposite the Canadian port of exit or the U.S. Immigration Attaché, whichever is appropriate, within one year of the revocation or expiration of the permit, or from the date of a final removal order, whichever is the later.

d) a non–resident alien to the U.S. who is authorized to return to Canada from the U.S. under A75, provided that:

   i) the removal order under appeal is based on an A20 report, and

   ii) the alien was seeking admission to Canada directly from the U.S. at the time of the A20 report.

   A formal letter of consent is not required:

   iii) if you satisfactorily establish that written notice of the facts and circumstances of the case was given to the immigration official in charge of the opposite U.S. POE immediately upon the arrival of the person concerned in Canada, and

   iv) you give verbal notice of the alien's departure from Canada at the conclusion of the IAD hearing to the immigration official in charge of the opposite U.S. port before the person's departure (see also section 6.1.4. below).

Contact in case of difficulties

Should difficulties arise in any case of a deportee (defined in part X of APPENDIX D) being returned to the U.S. under the terms of the Reciprocal Arrangement, contact:

The Immigration Attaché
United States Embassy
100 Wellington Street
Ottawa, Ontario K1P 5T1
Tel.: 613–238–5335, ext. 307

Content of notices

Both written and verbal notices must include sufficient identifying and biographic information to establish that the deportee is returnable under the terms of the Reciprocal Arrangement. Both immigration services will accept telegraphic verification of birth in lieu of an actual copy of the birth certificate as evidence of citizenship.

Telephone confirmation of birth

If you attempt unsuccessfully to obtain confirmation of birth of a citizen of the U.S., you should tell the Immigration Attaché at the United States Embassy what sources you contacted, to avoid duplication of effort by the U.S. service.

If you get verification of birth in the U.S. through the appropriate bureau of vital statistics by a telephone call, the Attaché will normally accept your word that you confirmed the pertinent details. Be sure to note the necessary data obtained from the vital statistics authorities during your telephone call, such as the deportee's full name, date and place of birth, parents' names, registration number and date of registration, and the full name, position and telephone number of the person who gave you the information.

6.1.2. Removal under the Reciprocal Arrangement with letters of consent

You should apply for a letter of consent from the Immigration Attaché at the U.S. Embassy in Ottawa *immediately* after a deportation order or an exclusion order becomes effective. This includes deemed deportation orders originating from port–of–entry departure order cases.

If you fail to apply for a letter of consent within one year of the order becoming effective, the person cannot be returned to the U.S. under the Reciprocal Arrangement. It is imperative that files be carefully reviewed and that letters of consent are promptly requested so that the opportunity to return a person under the Reciprocal Arrangement is not missed.

Persons being removed from Canada to the U.S.

The U.S. Immigration Attaché in Ottawa may issue a letter of consent on behalf of:

- a permanent resident alien to the U.S., provided that:
  - the alien has not abandoned residence by residing in a third country, and
  - the alien proceeded directly from the U.S. to Canada and was not admitted for permanent residence to Canada at that time, and
  - you submit the request for consent to return the alien within one year from the date of a final order of deportation, and
  - the alien came into Canada on or after August 1, 1949, and
  - you requested the letter of consent immediately after you were notified that the removal order became effective.
- a non–resident alien to the U.S., provided that:
  - the alien was denied admission at a POE and was ordered removed from Canada, and
  - the alien proceeded directly from the U.S. to Canada, and
  - you submit the request for consent to return the alien within one year from the date of a final removal order, and
  - in the case of a non–resident alien who requires medical evaluation or institutional care or treatment, you have made appropriate arrangements for reception in the U.S. (see also section 6.3.1. below).

Requests for letters of consent

Send your request for a letter of consent in duplicate to:

The Immigration Attaché
United States Embassy
100 Wellington Street
Ottawa, Ontario K1P 5T1

You should include:

- background information
- any information concerning reception by law–enforcement agencies (see section 6.1.3. below)
- any required advance notification
- a copy of the letter for return of a non–resident alien sent by the CIC manager to the USINS port opposite (see APPENDIX N for sample wording of the letter)
- the A20 report (form IMM 1093)
- a copy of either the exclusion order (form IMM 1214) or the deportation order (form IMM 1215), and
- all available evidence that verifies the deportee's identity and nationality (such as a copy of a birth certificate or baptismal certificate, copies of information pages of a passport, and an alien registration card).

You must give top priority to requesting a letter of consent in a detained case.

6.1.3. Advance notice of deportees of interest to U.S. law–enforcement authorities

If you are aware that a deportee is or may be of interest to law–enforcement authorities in the U.S., well before the actual removal you should provide the appropriate law–enforcement agency with advance notice of the relevant facts and circumstances of the case, and the person's travel arrangements.

6.1.4. Removal of persons allowed to return under A75 to attend an appeal

You must remove from Canada to the U.S. those persons residing or sojourning in the U.S. who are under a removal order made as a result of a report under A20(1), and who enter an appeal to the IAD, to await the disposition of the appeal [A49(1.1)]. These persons, and those who decide to return to the U.S. on their own before an appeal, may apply to the IAD to return to Canada to attend their appeal hearings [A75].

Alien residents

If the IAD has authorized the return of an alien resident of the U.S. under A75 and the person concerned seeks to come into Canada specifically for this purpose, an IO must notify the officer in charge of the opposite U.S. POE in writing of the facts and circumstances of the case immediately upon the person's arrival.

Alien residents of the U.S. will be permitted to return to the U.S. if:

- you can satisfactorily establish that the written notice just mentioned was given
- you give verbal notice to the officer in charge of the opposite U.S. port on the alien's departure from Canada at the conclusion of the appeal hearing, and
- the person otherwise meets the requirements of sections 1(a), 1(b) and 1(d) of part III of the Reciprocal Arrangement.

Aliens who are not permanent residents

An alien who is not a permanent resident of the U.S. and who is authorized to return to Canada under A75 will be permitted to return to the U.S. providing:

- the alien was the subject of an A20(1) report and was ordered removed from Canada on this basis
- the alien came to Canada directly from the U.S.
- you can satisfactorily establish that written notice of the facts and circumstances of the case was given to the officer in charge of the opposite U.S. port immediately on the person's arrival in Canada, and
- you give verbal notice to the officer in charge of the opposite U.S. port on the alien's departure from Canada at the conclusion of the appeal hearing.

6.1.5. Removal to the U.S. following issuance of a deportation order after admission to Canada

The Reciprocal Arrangement provides for the return of U.S. citizens and permanent resident aliens of the U.S. if they have been ordered deported after admission, and if all other requirements of the Arrangement are met.

Subject to A49 (on stays) and A50 (on not executing removal orders), you will deport:

- a citizen or national of the U.S., providing:
  - the person concerned meets the requirements of the Arrangement, and
  - existing policy on removals pending appeals or other litigation allows this action.
- a permanent resident alien only if:
  - the person comes within the terms of the Reciprocal Arrangement
  - existing policy on removals pending appeals or other litigation allows this action, and
  - you have first obtained a letter consenting to the person's return to the U.S.

A non–resident alien of the U.S. who has been ordered deported after admission is not returnable under the terms of the Reciprocal Arrangement. In this case, if you are executing a deportation order make the removal in accordance with A52. Should a non–resident alien of the U.S. who has been ordered deported after admission subsequently be refused entry to the U.S., that person would become subject to a report under A20(1).

If the person is detained and comes within the terms of

the Reciprocal Arrangement, complete the removal arrangements as a first priority. You must adhere to the notice and consent requirements of the Reciprocal Arrangement. If formal consent is required for the return of a deportee, you must make your request in writing within the applicable time frame and receive it back in writing. *You must apply for consent in these cases as expeditiously as possible.*

6.1.6. Persons ordered removed while serving prison terms

If the consent or notice provisions of the Reciprocal Arrangement apply to an inmate of a penitentiary, jail, reformatory or prison who has been ordered removed from Canada, you must request a letter of consent or provide notice to the U.S. Immigration Attaché within one year of the issuance of the removal order, or within one year of the final decision rendered in an appeal or other legal proceeding initiated by the person concerned against the removal order. Your request for consent or notice of the person's eventual removal should indicate that the execution of the removal order is deferred pending completion of the sentence.

For further information on inmates, see section 5.3.4. above.

6.2 Port–of–entry cases

6.2.1. Removal with letters of consent

To get a letter of consent before the removal to the U.S. of certain permanent resident aliens of the U.S. and non–resident aliens to the U.S., follow the procedures in section 6.1.2. above.

You must give top priority to requesting a letter of consent in a detained case.

6.2.2. Notice required for aliens if a Minister's permit is issued

For the purposes of the Reciprocal Arrangement, issuing a Minister's permit in circumstances warranting special consideration is equivalent to the discretionary grant of parole provided for in U.S. immigration law for emergency reasons or for reasons deemed strictly in the public interest.

If an alien seeks to come into Canada directly from the U.S. and an IO finds him or her to be inadmissible, it may nonetheless be desirable to allow the person forward on humanitarian or compassionate grounds or for reasons of national interest.

Although SIOs have the authority to grant an inadmissible person discretionary entry under A19(3), granting any form of entry does not afford Canada any protection if removal action against an alien to the U.S. becomes necessary at some future date. Issuing a Minister's permit in appropriate circumstances, however, ensures that Canada's interests are protected should there be any doubt that the person concerned will voluntarily leave Canada as required, providing:

a) a written notice of the facts and circumstances of issuing the permit (form IMM 1443; see APPENDIX O) is given by the IO to the official in charge of the opposite U.S. port immediately after the permit is issued, and

b) verbal notice of the alien's return is given to the official in charge of the U.S. port opposite the Canadian port of exit or the U.S. Immigration Attaché, whichever is appropriate, within one year of revocation or expiry of the Minister's permit or from the date of a final order of deportation, whichever is later.

6.2.3. Persons issued a rejection order or a direction to return to the U.S. after applying for admission at a Canadian POE

If a person has been issued a rejection order or a direction to return to the U.S. after applying for admission at a Canadian POE, you should return the person as soon as practicable to the place from where they came to Canada. The person will have:

- a rejection order (form IMM 1217; see APPENDIX P), or
- a direction to return to the U.S. under A20(2) (form IMM 1237; see APPENDIX Q), or
- a direction to return to the U.S. under A23(5) (form IMM 1238; see APPENDIX R).

The provisions of the Reciprocal Arrangement for letters of consent and giving notice do not apply to these persons.

6.3 Variable cases

6.3.1. Notice required in cases involving medical care or treatment

You must provide advance written notice of the return of any deportee to the U.S. if you have evidence to suggest that medical attention because of a mental or physical condition is required:

a) for **U.S. citizens**: with the written notice of the deportee's return, include:
   i) a written opinion of a competent authority (such as a medical doctor or an official of a medical institution) confirming the need for care or treatment
   ii) a description of the facts and circumstances of the case, and
   iii) the deportee's travel arrangements. If you cannot supply this information at the same time as you give notice, do it as soon as possible.

b) for **permanent resident aliens**: at the same time as you request a letter of consent from the U.S., provide the same advance written notice and information as for U.S. citizens. A deportee's mental or physical condition will not affect the grant of consent.

c) for **non–resident aliens**: the same request, notice and information as for permanent resident aliens. You must also meet the terms of part III.2 of the Reciprocal Arrangement.

6.3.2. Voluntary departure

Persons granted voluntary departure as defined in part X of the Reciprocal Arrangement are not governed by its terms. These persons are not deportees and are not subject to any of the requirements for requesting consent or giving notice.

For the purposes of the Reciprocal Arrangement only, the definition of the term "voluntary departure" has been broadened to include situations in Canada where:

- a removal order has been made

- a departure order has been issued, or
- a direction for inquiry has been issued, or where the person has been arrested for inquiry but has been granted permission to leave before the inquiry is completed.

6.3.3. Official records and privacy consideration

Under the *Privacy Act* you may provide information from the Commission's files to U.S. authorities:

- to establish that a deportee is returnable under the terms of the Reciprocal Arrangement
- to ensure that appropriate arrangements for reception are made for deportees requiring medical care
- to find out whether the deportee is wanted by U.S. law– enforcement authorities, and
- to assist port–of–entry procedures if safety and security factors may be indicated.

The USINS may provide information from their files to Canadian government offices for the first three of those four purposes. In cases involving criminality (such as deportees wanted by Canadian police authorities), U.S. authorities will communicate directly with the RCMP.

You may furnish U.S. authorities with fingerprints and photographs obtained under A110(2)(a)(iv) and s. 44 of the *Immigration Regulations* only when identity is in doubt.

6.3.4. Removal orders appealed or other legal proceedings begun

The Reciprocal Arrangement defines a "final order of removal" in part X. If a person under removal order begins an appeal or other court action, you have one year from the conclusion of all legal proceedings to comply with the notice or consent requirements of the Arrangement. It is important to ensure that you obtain consent within one year of the order becoming effective. Close monitoring of all appeal cases and cases involving incarceration is essential, so that you can obtain consent to remove within the appropriate time.

6.3.5. Persons being extradited from Canada to the U.S.

Persons extradited to the U.S. from Canada clearly come within the terms of the Reciprocal Arrangement since these persons (other than U.S. citizens or nationals) are granted parole into the U.S.

Since citizens or nationals of the U.S. can be returned to the U.S. without written consent, confirm that no appeals have been filed against the extradition.

6.3.6. Notification of persons being removed for criminal or drug offences

You notify posts abroad of persons being removed from Canada to any country for criminal or drug convictions. In U.S. cases you should also notify the U.S. Immigration Attaché in Ottawa and the receiving USINS authorities.

Ensure that the U.S. Immigration Attaché is notified of all persons being removed to the U.S., and why they have been found to be in contravention of the following sections of the Immigration Act: A19(1)(c), A19(1)(c.1), A19(1)(c.2), A19(1)(d), A19(1)(e), A19(1)(f), A19(2)(a), A19(2)(a.1), A19(2)(b), A27(1)(a), A27(1)(a.1), A27(1)(a.2), A27(1)(a.3), A27(1)(d), A27(2)(a) for criminal convictions only, or A27(2)(d).

6.3.7. Request for confirmation of vital statistics in the U.S.

The U.S. Immigration Attaché in Ottawa has provided a list of state vital–statistics offices for the 50 states and the District of Columbia (see APPENDIX S). You may find the list useful for verifying the birth records of deportees who are U.S. citizens.

You must make all requests in the most expedient manner, such as Priority Post, facsimile, telegram and so forth.

For New York City, your request must be in the following form:

> I have been authorized by *name* to obtain confirmation of the birth of *name* on *date* at New York City in *borough*, son of *father's name* and *mother's name*. Please confirm birth particulars as soon as possible, by courier, facsimile, telegram or whatever is local office procedure.

Send the request to the Director of Vital Statistics, Department of Health, 125 Worth Street, New York, N.Y. 10013.

For persons under removal order who were born in Georgia, make your request through the Immigration Section of the Canadian Consulate General in New York City. Include all relevant information in your request. The consulate will inform you the findings of the search made by the Georgia Department of Human Resources. If you need a birth certificate, follow the same procedure; the consulate will obtain the document and send it to you. The consulate will bear all costs.

Some states have specific requirements for confirmation of birth particulars, and several charge fees. For the following states, make your requests through the responsible Canadian consulate:

- Connecticut: requires a written government request and the written consent of the individual concerned
- Iowa: send requests through the Buffalo office
- Nebraska: fee, billed to the Buffalo office
- New Hampshire: fee
- Oklahoma: requires a letter of authority from the person concerned and particulars of the person's parents, including the mother's maiden name; fee
- Texas: keeps statistics by county, and requires the consent of the person concerned for every county except Dallas; fee
- Wisconsin: fee, billed to the Buffalo office.

If you encounter problems in verifying births in a particular state, contact the Immigration Section of the responsible Canadian consulate, who then contacts the vital statistics department with the request, guarantees payment of any fee, and returns the information to you.

When you send a request through a consulate, you must provide your office's financial code so that the consulate can recover any expenses incurred.

If a state refuses to release birth information because the person concerned will not consent to its release, and all other methods have failed, you may have to contact the U.S. Immigration Attaché.

If you have asked the U.S. Immigration Attaché or USINS to confirm or secure vital statistics for persons under removal order, and you have then been able to get the information from another source, inform the Attaché or USINS immediately.

6.3.8. Removal via the U.S. to other countries

Escorted persons

You need the consent of the U.S. Immigration Attaché in Ottawa to remove a person under escort via the U.S. to a third country. On arrival at the U.S. POE, the escort officer must:

- get a US 1–94 form from the U.S. examining officer
- have the form signed by the master of the vehicle by which the person's departure from the U.S. is effected
- return the signed form to the U.S. port of issue, and
- sign the confirmation of departure (form IMM 56) when you have witnessed the departure.

Removal by air

If you remove a person from Canada on an aircraft that merely calls for servicing at a U.S. airport and then continues to its destination in a third country, you do not need to provide an escort through the U.S. You must give advance notice by facsimile or telex to the USINS officer where the aircraft lands of the expected date and time of arrival and departure, so the person does not disembark and the USINS can verify departure. Depending on your local office procedures, you may also inform the U.S. Immigration Attaché.

Removal on ships calling at U.S. ports

An escort is not necessary when you are removing a person from Canada to a third country on a ship that may call at a U.S. port before proceeding abroad. If you know the port of call, you must inform the USINS officer in charge or the USINS regional director. The ship's master is responsible for safeguarding the person and informing the USINS officer in charge that he has the person on board.

This procedure does not affect the Reciprocal Arrangement provision to escort persons under removal order who are brought into either country in transit for embarkation on a ship.

6.3.9. Arranging for an escort

For procedures in arranging for an escort under the Reciprocal Arrangement, see section 7. below:

- arrangements (section 7.1)
- subsistence for persons under removal order (section 7.4), and
- escort by transportation companies (section 7.6).

6.3.10. Cases involving medical treatment or care

If you are removing a person to the U.S. who has a mental disorder or is an institutional case, you must request a written consent to return from the U.S. Immigration Attaché. The Reciprocal Arrangement mentions that it

is the responsibility of the U.S. to undertake to arrange appropriate receptions; experience has shown, however, that to remove a person as soon as possible you should arrange reception in the U.S. When you are requesting consent, give full details of the arrangements to the U.S. Immigration Attaché. You must also provide advance notification of the date and hour of arrival to the receiving institution (see also section 6.3.1. above).

6.3.11. Document envelope

When you are turning persons over to the USINS, give the document envelope and contents to the examining officer at the U.S. POE.

7. ARRANGING FOR AN ESCORT

7.1 Arrangements

CRUs are responsible for arranging all overseas escorts, except in cases where there is a direct flight from the CIC in charge of the case to the final destination (for example, Calgary to London, England).

You or your CIC manager are responsible for making escort arrangements to the U.S. border or, if circumstances indicate a need for special care, to the final destination for persons destined to the U.S.

The itinerary of an escort and a deportee requiring special care who is destined to the U.S. may include one or more stops within the U. S. before the final destination. In this case the escort officer should stay with the deportee until the final destination, or until the escort officer can leave the deportee in capable hands. Normally when a deportee requires special care the escort will continue to the final destination. If the escort officer requires ground assistance at any of the stopovers en route, the officer should ask the airport authorities or officials of the United States Immigration and Naturalization Service (USINS) at the airport involved. In special–care cases, the escort should not leave the deportee at any point other than the final destination, unless you have already made appropriate arrangements for the person's reception at an alternative location.

You or your CIC manager must exercise discretion in deciding whether a person to be removed requires an escort while en route to the final port of departure from Canada. You should consider these factors:

- does the person have a serious criminal background, or was the person serving a sentence?
- is the person a potential escapee or considered a danger to the public?
- has the person been previously removed?
- is there evidence of mental instability?
- is the person under any special medication?
- are there potential problems at transit points?

If you determine that the person does not require an escort to another port of departure, you should:

- book and confirm the connecting flight, preferably leaving on the same day
- notify the responsible airlines (see section 5.15 above), and
- notify Canadian officials at transit points.

Detention increases costs and workload at the receiving port. If there is more than a three–hour layover between connecting flights, or if you must detain the person overnight, you should include in the person's documentation a signed order for detention (form IMM 421; see APPENDIX T). When you arrest and detain a person for removal, or when an offender who is in immigration custody is transferred from one institution to another, serve a copy of a new order for detention (form IMM 421) on the warden, governor or other person in charge of the institution where the person is being incarcerated. Ensure that a new

IMM 421 is served on the institution *every time* the individual is transferred from one institution to another. When required, also serve a copy of the exclusion order, the deportation order, or the departure order (forms IMM 1214, IMM 1215, or IMM 5238).

It may sometimes be advisable for you to consult police or hospital authorities to determine the number of escort officers needed, and to request police or medical assistance.

7.2 Advance notification of removal arrangements to ports of departure of persons under exclusion and deportation orders

When the person being removed, escorted or not, transits at a port of departure in Canada, you should advise the port of the person's arrival at least one day in advance by facsimile and follow up by telephone. Since the receiving port has had no prior contact with the individual, they will need all the useful information you can give them. International airlines often seek detailed information on persons being removed.

Include the following information in your message:

- the person's file number
- the person's description and sex
- if accompanied by a family, the names and ages of all members
- arrival and departure information
- details of any previous detention
- the person's mental attitude
- the reason for removal, and
- whether the person concerned will be escorted or not; if so, provide the names of the escort officers.

The person will be carrying a certificate of departure with a photo affixed. The receiving port can confirm with the certificate that the person is the subject of the removal order. You should also have arranged to have the person's documentation placed in a document envelope (IMM 1226; see APPENDIX U) and transferred from the first airline's purser to the connecting flight's personnel.

7.3 Instructions to escort officers

You should give escort officers written instructions outlining the nature of the case and the action required, relevant documents, and the person's baggage and personal effects if you have custody of them. Your instructions must contain:

- case history: a brief outline noting citizenship, age, basis for removal, accompanying dependents, and whether the person is being removed or repatriated
- flight arrangements: the flight number and carrier, port of departure, and departure time
- escorting instructions: if the person is being escorted from the place of residence to the port of departure, give dates, hours of departure, cities, transfer points, and stopovers

- documents: passport and number, medical information, warrant for arrest, detaining order, confirmation of departure (IMM 56), removal order, notice of removal profile and receipts for the person's property; use a document envelope (IMM 1226) for safekeeping papers and documents
- tickets and baggage: details for the escort and the person concerned
- precautions and remarks: information about the person's attitude to removal, behaviour in jail (in criminal cases), and any other information disclosed on file that might be of assistance to the escorting officer, and
- return to duty: the hour and date on which the escort is to report back.

7.4 Subsistence for persons under removal order

You or your CIC manager have the discretion to arrange for the person's subsistence or the means to buy it. Supply cash only to persons being removed under the Reciprocal Arrangement, and who are travelling without escort from the Canadian border to distant points in the United States. If it appears necessary to provide financial assistance for transportation to persons other than U.S. deportees, consult your supervisor or manager.

7.5 Baggage and personal finances

When you accept the person into custody, the institution or immigration station may require a receipt, or separate receipts, for the person and the person's effects. If so, you must get a complete list of valuables, money or baggage belonging to the person and see that this list appears on the receipt. Retain a copy and place it on file when you return to duty.

You must ensure that the person's baggage has been collected and accompanies the person when removal is effected, checking the baggage through to the final destination whenever possible.

On behalf of the person, whenever possible, pick up and cash any pay cheques belonging to the person, and conclude all banking arrangements. Exchange the money if possible.

7.6 Escort by transportation companies

If a transportation company is responsible for ensuring the departure of a person from Canada, the company must make its own escort arrangements for travel outside Canada. If the company does not offer an escort to a person within Canada, immigration escort officers may escort the person, but expenses for the escort should be charged to the company (see chapter PE 14). With the exception of escorting to U.S. ports of departure to third countries, only in exceptional circumstances will an IO escort a person outside Canada to accommodate a transportation company. The arrangements must be clearly documented to the airline, with all removal and escort costs documented and accepted by the airline in writing.

7.7 Medical escorts

You may allow a federal government medical officer to act as an escort officer only when removal is at public expense and medical attention is required en route.

General principles

The following general principles have been established for the purpose of guiding officers in determining when to seek medical assistance with respect to escorting persons who have a history of violent behaviour or persons who may become violent or create a disturbance when removal is in progress:

- under no circumstances will any person be taken to a physician solely for the purpose of that person being placed under sedation for removal from Canada;
- where a person has been taken to a physician for some other legitimate medical reason, the physician may address the question of sedation for removal as a secondary issue. If the physician decides to prescribe medication, the person concerned must be asked if he or she wishes to take such medication, and if not, no medication is to be administered. (The only exception to this is in the psychiatric cases as described below in Case situations – section 1. b).)

Case situations

1. Cases where medical treatment is being administered or persons are under psychiatric care/treatment in an institution or hospital

These situations usually involve:

a) persons who are suffering from a medical condition that requires the administration of drugs at regular intervals;

b) persons who are currently in mental or psychiatric institutions or hospitals.

The first situation is one in which medication will have been prescribed for treating medical disorders (e.g. heart condition) that are considered serious enough to warrant the presence of a physician or registered nurse during removal. The physician or nurse is present only for the purpose of administering medication and/or monitoring the condition of the person being removed from Canada. Any drugs administered are given to the patient of his or her own volition to treat that patient's medical condition.

The second situation is one in which the person being removed from Canada has been institutionalized for psychiatric treatment and is probably being returned to his or her home country for the continuation of treatment (i.e., usually to a mental institution or hospital). The medication administered in these cases is a continuation of the on–going treatment prescribed by the psychiatrist or physician.

In either of these two case situations, arrangements may be made for the removal from Canada of such persons under medical escort, if considered appropriate by the officer in consultation with the attending physician or psychiatrist. It will not be necessary to refer such cases to NHQ for concurrence before finalizing travel arrangements and effecting removal.

2. Cases where persons have a history of violent behaviour or are likely to become violent

The situations usually involve:

a) persons who have a history of violent behaviour, with a criminal record for violent acts, who are usually being detained in jail;

b) persons who become violent or create a disturbance when removal is in progress.

In these situations, in those cases where the person concerned has not agreed to any medication being administered or where a person's behaviour is such that he or she is likely to become violent or create a disturbance, immigration officers making removal arrangements should seek the assistance of the RCMP in carrying out such removals.

Item 9 of the Memorandum of Understanding between EIC and the RCMP (dated June 13, 1984) provides for the RCMP to assist EIC, when requested, with the removal from Canada of persons who are considered to be violent or dangerous. The RCMP have advised that they are willing to assist us in removing persons described in sections 2. a) and b).

The RCMP are guided by the same legal and medical concerns in these cases. Where a difficult removal is encountered, the RCMP will have to physically control the person being removed with the appropriate restraints, as required. All such cases should be accompanied by at least one immigration officer to assist with documentation and immigration matters in the receiving country and at any transit point.

Regional offices should liaise with their RCMP counterparts to ensure that they are aware of these procedures. The RCMP officers providing assistance in these types of escorts will require valid passports as well as up–to–date proof of immunization.

The Departments of Justice, Health and Welfare and the RCMP were consulted in the preparation of these guidelines. Where a medical escort is being contemplated in any situation not described in these guidelines, the Chief of Removals, Enforcement Branch, NHQ should be consulted.

7.8 Escorts for removal via the U.S.

Unless you make other arrangements with the USINS, it is the Commission's responsibility to arrange for an escort for the removal via the U.S. of a person deported after admission to Canada, if the person must deplane in the U.S. en route to a third country. This provision applies even if the airline does not require the person under removal order to be escorted.

8. ESCORT RESPONSIBILITIES

8.1 Responsibilities of expulsion and escort officers

8.1.1. Safekeeping of documents and effects and the physical safety of persons

You are responsible for the safe custody of persons under removal order, and the safekeeping of documents and effects of persons under your charge. While on escort duty, you or an escort officer must be vigilant to ensure the physical safety of the persons, whether threatened by their own acts or those of other persons. If the services of more than one officer are required, you as the escorts' supervisor determine which officer will assume responsibility for the escort. Use a document envelope (IMM 1226) for the safekeeping of papers and documents.

8.1.2. Precautions to prevent escape

Escort officers must exercise every care to prevent the escape of persons in their custody, and decide whether handcuffs or other restraining equipment must be used according to the circumstances. Take these precautions:

- do not handcuff or chain persons under removal order to any immovable object while in transit
- when transporting a person by automobile, ensure that the person is seated on the right–hand side of the rear seat; the escort officer must sit directly behind the driver
- check the vehicle and surrounding area to ensure that there are no objects that could be used by the person as a weapon
- if the person causes a disturbance during escort, try to remove the person from public view as quickly as possible
- when using public transportation, arrange if possible to enter the vehicle ahead of the other passengers, sit at the rear of the vehicle, and ensure that you are the last passengers to disembark, and
- do not linger with the person in public places. If transportation is delayed, try to secure a room in the terminal away from the general public.

8.2 Using the document envelope

The document envelope (form IMM 1226) is specially designed for the safekeeping of papers such as passports, travel documents and tickets for persons subject to removal proceedings. The envelope is addressed to the flight attendant or purser.

You should:

- complete the face of the envelope by recording the details of the removal and contents
- affix a photograph of the person concerned to the front of the envelope for ready identification

- instruct the officer effecting the actual removal of the person:
  - to turn the envelope over to the responsible person on the aircraft, with verbal instructions on the disposition of the contents if these differ from the preprinted notice on the face of the envelope, and
  - if the officer is turning the person over to the USINS, to give the envelope and contents to the examining officer at the U.S. POE
- if the person is being escorted to a destination or on part of the journey, instruct the escort officer to carry the envelope personally.

8.3 Procedures for the carriage of deportees under escort

The Commission has agreed with representatives of the organizations concerned on *Recommended Procedures for the Carriage of Firearms and Passengers under Escort aboard Canadian Registered Aircraft*, published as a Transport Canada Notice to Airmen (NOTAM; see APPENDIX V). The procedures, including completion of the Notice to Armed Individuals and Escort Officers form (APPENDIX V, section B.2.2), refer only to individuals who are to be escorted. The procedures impose no requirement to provide an assessment of the "risk of security", or to give the carrier advance notification of the carriage of unescorted deportees.

Each carrier is responsible for printing its own supply of the Notice to Armed Individuals and Escort Officers form. Regional officials may wish to establish liaison with local airline representatives if they have any questions concerning the use and completion of this document.

9. ESCORT PRECAUTIONS AND ESCAPE REPORTS

9.1 Escape or attempt to escape custody

The Act provides for the prosecution of persons who escape or attempt to escape from lawful custody or detention [A94(1)(d)]. See section 9.2 below for initiating prosecution action.

9.2 Reports on persons escaping custody

9.2.1. Procedures if a person escapes from the custody of an IO

You or an IO must take the following action immediately if a person escapes from custody:

- notify the nearest municipal or provincial police and the RCMP.
- notify the nearest immigration manager, who will in turn notify by telex the Director, Immigration, of the region concerned, the port in charge of the case and the CRU concerned. The telex must give details of the identity of the person and place of escape
- unless you are instructed otherwise, get the assistance of other local IOs who may be able to assist and search the area thoroughly.
- if the escape occurs outside Canada, notify the local municipal or state police force and the nearest immigration representative for advice on how best to handle the situation in the local context.
- if the escape occurs in the U.S., notify the nearest USINS officer and the manager of the Canadian port responsible for the case. The port manager will then notify the appropriate officials.
- on returning to your place of work, submit a full written report to your manager, providing details of events leading up to the escape, the escape itself, and action taken following the escape. As soon as a complete investigation has been concluded, the manager at the port of origin must submit a full report to the area manager. The report must contain any observations or recommendations from the manager that may assist in determining cause and preventing future escapes by proper remedial action. The area manager must forward the report, with any necessary comments and recommendations, to the Director or Director General, Immigration, and ensure that CPIC action has been taken if the person has not been located.
- when the escapee is again placed in custody, inform all authorities previously notified of the escape.
- if the escapee is not located, you should enter a warrant, lookout and NCB into FOSS on returning to your office.

9.2.2. Procedures if a person escapes from the custody of facilities of a transportation company

If a person escapes from the custody of facilities of a transportation company, the local CIC manager must take the following action immediately:

- notify the nearest municipal or provincial police and the RCMP.

- notify the regional Director or Director General of Immigration and the area manager by facsimile or telex. Provide details of the identity of the person, place of escape, name of the transportation company responsible for the escapee, and the method of escape.
- get a written report on the escape from the transportation company or member of the crew.
- conduct a full investigation into the cause of the escape and all precautions taken by the transportation company. If there is negligence or failure on the part of the transportation company to provide proper security or facilities, make recommendations for penalty action or any remedial action necessary to prevent future escapes.
- send the report to the area manager, who will forward the report, with any necessary comments or recommendations, to the Director or Director General, Immigration. The area manager must also ensure that CPIC action has been taken if the escapee is not located immediately. If the transportation company is at fault the Director, Immigration, must write to the company advising it of its responsibility under the Act and the *Immigration Regulations*, of the fact that it is liable to a penalty, and that the company has 30 days in which to show cause why the penalty should not be imposed. The Director, Immigration, will send to the Director General, Enforcement Branch at National Headquarters a full report of the escape from the transportation company's care or custody. This report must provide comments on the cause of the escape, details of the escape itself, any remedial action that has been taken to prevent further escapes, and copies of all correspondence to the transportation company. National Headquarters will reply to any representations from the transportation company, informing it in writing of the amount of the penalty when one is imposed, and what action, if any, is required for an additional security deposit.
- when the escapee is again placed in custody, inform all the authorities previously notified of the escape.

10. SEIZING AND RETURNING DOCUMENTS

10.1 Seizing documents

After you remove a person, you should return all documents issued by Canadian government departments to the appropriate department or office of issue. For further information concerning your responsibility to seize documents, see section 5.8 above.

10.2 Returning documents to other government departments

Before you allow voluntary departure or effect a removal, you should seize Social Insurance Number (SIN) cards and other government documents and cards that show the person's identity. Send them to the appropriate government departments. APPENDIX W gives the addresses of Investigation and Control offices for SIN cards. Your covering memorandum should include:

- the person's name, date of birth, last address in Canada and SIN number
- how the card was retained on file (whether it was seized or surrendered)
- the country to which the person is proceeding and the date of departure
- how the person originally obtained the card (for example, while in possession of an employment authorization, as a visitor, or before arrival)
- if applicable, an explanation of any variance in names or numbers (for example, was the person using someone else's card, or had the person applied more than once for a card), and
- other information that could be useful to immigration authorities in identifying persons who may try to use the system illegally, possibly by returning to Canada at a later date and reapplying for a SIN card.

11. THE EFFECT OF REMOVAL ORDERS

11.1 The Minister's consent for re–entry

Unless an appeal has been allowed, and except as provided in section 11.3 below, a person against whom a deportation order is made, and who is removed from or leaves Canada, shall not come into Canada without the consent of the Minister [A55(1)].

A person who has been previously deported and who is issued a departure order still requires the consent of the Minister to return to Canada. The fact that a person who has been previously deported has been removed on a departure order does not

negate the requirement for the person to obtain the consent of the Minister before returning to Canada.

11.2 The Minister's consent and reimbursement of removal costs

If a person against whom an departure order has been made has failed to verify his or her departure (the departure order then being deemed to be a deportation order [A32.02(1]), and is subsequently removed from Canada, that person shall not come into Canada without the consent of the Minister [A55(1)]:

- unless an appeal has been allowed, and
- unless the person has reimbursed Her Majesty for any prescribed costs incurred by Her Majesty in deporting the person [A55.1].

The costs are prescribed under s. 42.1 of the *Immigration Regulations*.

11.3 Re–entry for an appeal hearing

Section 56(1) of the Act provides that the IAD may allow a person to return to Canada for an appeal hearing without the consent of the Minister, under terms and conditions set by the IAD [A75].

11.4 Re–entry of family members

Persons included in a deportation order under A33(1) do not require the consent of the Minister to return to Canada. The section provides for the removal of members of the family who are dependant on the person in Canada if that person becomes the subject of a removal order or conditional removal order made by an adjudicator, unless the dependant is a Canadian citizen or a permanent resident 19 or more years of age. The deportation order does not preclude the future admission of dependents who are Canadian citizens or permanent resident 19 or more years of age, and they are not considered to have been deported for the purpose of the Minister's consent.

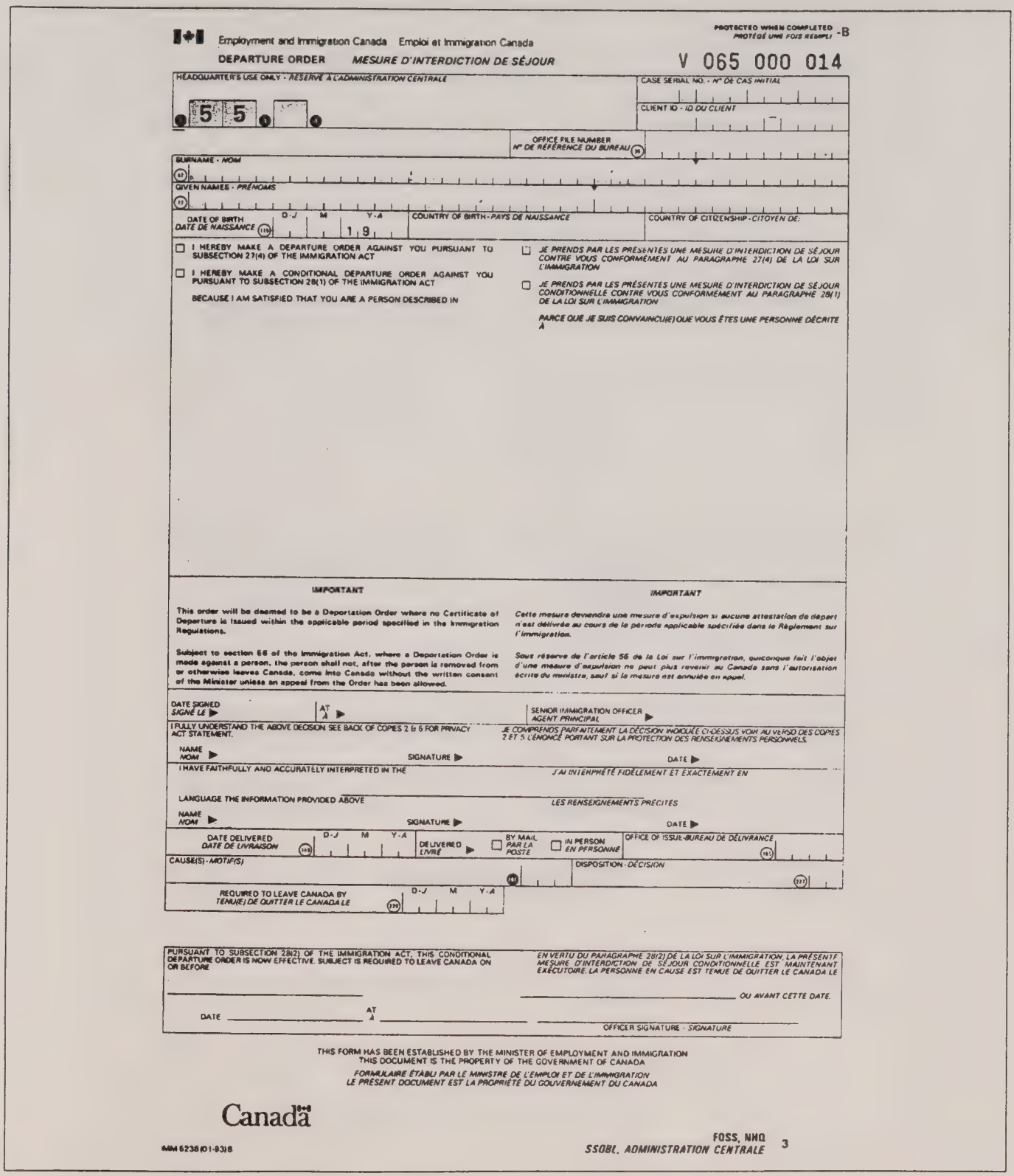
11.5 Re–entry following denial of entry elsewhere

Persons under removal proceedings who are obliged to return to Canada because they have been denied entry elsewhere may come into Canada without the consent of the Minister [A54(1)]; see section 2.3 above.

11.6 Re–entry during stay of execution

If the IAD stays the execution of a removal order under A74(2), the person concerned does not require the Minister's consent to come into Canada at any time during the period for which the stay of execution is in effect [A56(2)].

APPENDIX A
SAMPLE OF IMM 5238 (01–93) B – DEPARTURE ORDER



Employment and Immigration Canada Emploi et Immigration Canada

PROTECTED WHEN COMPLETED / PROTÉGÉ UNE FOIS REMPLI -B

DEPARTURE ORDER *MESURE D'INTERDICTION DE SÉJOUR*

V 065 000 014

HEADQUARTER'S USE ONLY - *RÉSERVÉ À L'ADMINISTRATION CENTRALE* 5 5

CASE SERIAL NO. - *N° DE CAS INITIAL*

CLIENT ID - *ID DU CLIENT*

OFFICE FILE NUMBER / *N° DE RÉFÉRENCE DU BUREAU* (30)

SURNAME - *NOM* (97)

GIVEN NAMES - *PRÉNOMS* (77)

DATE OF BIRTH / *DATE DE NAISSANCE* (110) D-J M Y-A 1 9

COUNTRY OF BIRTH - *PAYS DE NAISSANCE*

COUNTRY OF CITIZENSHIP - *CITOYEN DE:*

☐ I HEREBY MAKE A DEPARTURE ORDER AGAINST YOU PURSUANT TO SUBSECTION 27(4) OF THE IMMIGRATION ACT

☐ I HEREBY MAKE A CONDITIONAL DEPARTURE ORDER AGAINST YOU PURSUANT TO SUBSECTION 28(1) OF THE IMMIGRATION ACT

BECAUSE I AM SATISFIED THAT YOU ARE A PERSON DESCRIBED IN

☐ *JE PRENDS PAR LES PRÉSENTES UNE MESURE D'INTERDICTION DE SÉJOUR CONTRE VOUS CONFORMÉMENT AU PARAGRAPHE 27(4) DE LA LOI SUR L'IMMIGRATION*

☐ *JE PRENDS PAR LES PRÉSENTES UNE MESURE D'INTERDICTION DE SÉJOUR CONDITIONNELLE CONTRE VOUS CONFORMÉMENT AU PARAGRAPHE 28(1) DE LA LOI SUR L'IMMIGRATION*

PARCE QUE JE SUIS CONVAINCU(E) QUE VOUS ÊTES UNE PERSONNE DÉCRITE À

IMPORTANT

This order will be deemed to be a Deportation Order where no Certificate of Departure is issued within the applicable period specified in the Immigration Regulations.

Subject to section 56 of the Immigration Act, where a Deportation Order is made against a person, the person shall not, after the person is removed from or otherwise leaves Canada, come into Canada without the written consent of the Minister unless an appeal from the Order has been allowed.

IMPORTANT

Cette mesure deviendra une mesure d'expulsion si aucune attestation de départ n'est délivrée au cours de la période applicable spécifiée dans le Règlement sur l'immigration.

Sous réserve de l'article 56 de la Loi sur l'immigration, quiconque fait l'objet d'une mesure d'expulsion ne peut plus revenir au Canada sans l'autorisation écrite du ministre, sauf si la mesure est annulée en appel.

DATE SIGNED / *SIGNÉ LE* ▶ AT / *À* ▶ SENIOR IMMIGRATION OFFICER / *AGENT PRINCIPAL* ▶

I FULLY UNDERSTAND THE ABOVE DECISION SEE BACK OF COPIES 2 & 6 FOR PRIVACY ACT STATEMENT.

JE COMPRENDS PARFAITEMENT LA DÉCISION INDIQUÉE CI-DESSUS VOIR AU VERSO DES COPIES 2 ET 5 L'ÉNONCÉ PORTANT SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS

NAME / *NOM* ▶ SIGNATURE ▶ DATE ▶

I HAVE FAITHFULLY AND ACCURATELY INTERPRETED IN THE LANGUAGE THE INFORMATION PROVIDED ABOVE

J'AI INTERPRÉTÉ FIDÈLEMENT ET EXACTEMENT EN LES RENSEIGNEMENTS PRÉCITÉS

NAME / *NOM* ▶ SIGNATURE ▶ DATE ▶

DATE DELIVERED / *DATE DE LIVRAISON* (140) D-J M Y-A DELIVERED / *LIVRÉ* ▶ ☐ BY MAIL / *PAR LA POSTE* ☐ IN PERSON / *EN PERSONNE* OFFICE OF ISSUE - *BUREAU DE DÉLIVRANCE* (150)

CAUSE(S) - *MOTIF(S)* (161)

DISPOSITION - *DÉCISION* (727)

REQUIRED TO LEAVE CANADA BY / *TENU(E) DE QUITTER LE CANADA LE* (170) D-J M Y-A

PURSUANT TO SUBSECTION 28(2) OF THE IMMIGRATION ACT, THIS CONDITIONAL DEPARTURE ORDER IS NOW EFFECTIVE. SUBJECT IS REQUIRED TO LEAVE CANADA ON OR BEFORE

EN VERTU DU PARAGRAPHE 28(2) DE LA LOI SUR L'IMMIGRATION, LA PRÉSENTE MESURE D'INTERDICTION DE SÉJOUR CONDITIONNELLE EST MAINTENANT EXÉCUTOIRE. LA PERSONNE EN CAUSE EST TENUE DE QUITTER LE CANADA LE

_____ *OU AVANT CETTE DATE.*

DATE _____ AT / *À* _____ _____

OFFICER SIGNATURE - *SIGNATURE*

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT OF CANADA

FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION
LE PRÉSENT DOCUMENT EST LA PROPRIÉTÉ DU GOUVERNEMENT DU CANADA

Canada

IMM 5238 (01-93)B

FOSS, NHQ
SSOBL, ADMINISTRATION CENTRALE 3

APPENDIX B

SAMPLE OF IMM 1215 (08–92) B – DEPORTATION ORDER

Employment and Immigration Canada
DEPORTATION ORDER

Emploi et Immigration Canada
MESURE D'EXPULSION

PROTECTED WHEN COMPLETED
PROTÉGÉ UNE FOIS REMPLI

V 021 198 015

HEADQUARTERS' USE ONLY - RÉSERVÉ À L'ADMINISTRATION CENTRALE

5 3

CASE SERIAL NO. - N° DE CAS INITIAL

CLIENT ID. - ID DU CLIENT

OFFICE FILE NO. - N° DE RÉFÉRENCE DU BUREAU

SURNAME - NOM

GIVEN NAMES - PRÉNOMS

DATE OF BIRTH / DATE DE NAISSANCE D - J M M Y - A 1 9

COUNTRY OF BIRTH / PAYS DE NAISSANCE

COUNTRY OF CITIZENSHIP - CITOYEN DE

ON THE BASIS OF THE EVIDENCE ADDUCED AT THE INQUIRY HELD UNDER THE PROVISIONS OF THE IMMIGRATION ACT,

☐ I HEREBY ORDER THAT YOU BE DEPORTED PURSUANT TO SUBSECTION _____ OF THAT ACT

☐ I HEREBY CONDITIONALLY ORDER THAT YOU BE DEPORTED PURSUANT TO PARAGRAPH _____ OF THAT ACT BECAUSE YOU ARE A PERSON DESCRIBED IN

D'APRÈS LA PREUVE PRODUITE À L'ENQUÊTE TENUE AUX TERMES DE LA LOI SUR L'IMMIGRATION,

☐ *J'ORDONNE PAR LES PRÉSENTES QUE VOUS SOYEZ EXPULSÉ(E) CONFORMÉMENT AU PARAGRAPHE _____ DE LA LOI*

☐ *J'ORDONNE CONDITIONNELLEMENT PAR LES PRÉSENTES QUE VOUS SOYEZ EXPULSÉ(E) CONFORMÉMENT À L'ALINÉA _____ DE LA LOI PARCE QUE VOUS ÊTES UNE PERSONNE VISÉE À*

PURSUANT TO SUBSECTION 32.1(6) OF THE IMMIGRATION ACT, NO CONDITIONAL DEPORTATION ORDER MADE AGAINST A CLAIMANT IS EFFECTIVE UNLESS AND UNTIL,

A) THE CLAIMANT WITHDRAWS THE CLAIM TO BE A CONVENTION REFUGEE
B) THE CLAIMANT IS FINALLY DETERMINED UNDER THIS ACT TO HAVE ABANDONED THE CLAIM TO BE A CONVENTION REFUGEE,
C) THE CLAIMANT IS FINALLY DETERMINED UNDER THIS ACT NOT TO BE A CONVENTION REFUGEE, OR
D) THE CLAIMANT IS DETERMINED AT AN INQUIRY REOPENED PURSUANT TO SUBSECTION 46.01(1) NOT TO HAVE A RIGHT UNDER SUBSECTION 45(2.1) TO REMAIN IN CANADA

SUBSECTION 32.1(1) DEFINES A CLAIMANT AS A PERSON WHO CLAIMS TO BE A CONVENTION REFUGEE AND WHOSE CLAIM HAS BEEN REFERRED TO THE REFUGEE DIVISION

EN VERTU DU PARAGRAPHE 32.1(6) DE LA LOI SUR L'IMMIGRATION, UNE ORDONNANCE D'EXPULSION CONDITIONNELLE NE DEVIENT EXÉCUTOIRE QUE SI SE RÉALISE L'UNE OU L'AUTRE DES CONDITIONS SUIVANTES.

A) LE DEMANDEUR DE STATUT RENONCE À SA REVENDICATION DU STATUT DE RÉFUGIÉ AU SENS DE LA CONVENTION,
B) LE DÉSISTEMENT DU DEMANDEUR DE STATUT A ÉTÉ, EN CETTE MATIÈRE DÉFINITIVEMENT ÉTABLI,
C) LE STATUT DE RÉFUGIÉ AU SENS DE LA CONVENTION A ÉTÉ DÉFINITIVEMENT REFUSÉ AU DEMANDEUR DE STATUT,
D) IL A ÉTÉ DÉTERMINÉ, LORS D'UNE ENQUÊTE ROUVERTE AUX TERMES DU PARAGRAPHE 46.01(1), QUE LE DEMANDEUR DE STATUT N'AVAIT PAS, EN APPLICATION DU PARAGRAPHE 45(2.1), LE DROIT DE DEMEURER AU CANADA

LE PARAGRAPHE 32.1(1) DÉFINIT UN DEMANDEUR DE STATUT COMME ÉTANT UNE PERSONNE QUI REVENDIQUE LE STATUT DE RÉFUGIÉ AU SENS DE LA CONVENTION ET DONT LA REVENDICATION EST DÉFÉRÉE À LA SECTION DU STATUT

DATE ▶ TIME / HEURE ▶ AT / À ▶ ADJUDICATOR / ARBITRE ▶

I FULLY UNDERSTAND THE ABOVE DECISION. I ALSO FULLY UNDERSTAND THAT I MUST NOT COME INTO CANADA WITHOUT THE WRITTEN CONSENT OF THE MINISTER OF EMPLOYMENT AND IMMIGRATION AT ANY TIME AFTER THE DAY ON WHICH I AM REMOVED FROM OR OTHERWISE LEAVE CANADA. SEE BACK OF COPIES 2 AND 5 FOR PRIVACY ACT STATEMENT

JE COMPRENDS PARFAITEMENT LA DÉCISION INDIQUÉE CI-DESSUS. EN OUTRE, JE COMPRENDS PARFAITEMENT QU'APRÈS LA DATE OU J'AURAI ÉTÉ RENVOYÉ(E) DU CANADA OU CELLE OU J'AURAI PAR AILLEURS QUITTÉ LE CANADA, JE NE DEVRAI PAS Y REVENIR SANS L'AUTORISATION ÉCRITE DU MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION. VOIR AU VERSO DES COPIES 2 ET 5 L'ÉNONCÉ PORTANT SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS.

NAME / NOM ▶ SIGNATURE ▶ DATE ▶

I HAVE FAITHFULLY AND ACCURATELY INTERPRETED IN THE _____ LANGUAGE THE INFORMATION PROVIDED ABOVE.

J'AI INTERPRÉTÉ FIDÈLEMENT ET EXACTEMENT EN _____ LES RENSEIGNEMENTS PRÉCITÉS.

NAME / NOM ▶ SIGNATURE ▶ DATE ▶

DATE SIGNED / SIGNÉ LE D / J M M Y - A (9) OFFICE OF ISSUE - BUREAU DE DÉLIVRANCE (10)

IMM 1215 (08-92) B

Canada

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT OF CANADA
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION
LE PRÉSENT DOCUMENT EST LA PROPRIÉTÉ DU GOUVERNEMENT DU CANADA

ADJUDICATOR / *ARBITRE* 1

PURSUANT TO SUBSECTION 32.1(5) OF THE IMMIGRATION ACT, THIS CONDITIONAL DEPORTATION ORDER IS EFFECTIVE AS OF _____

EN VERTU DU PARAGRAPHE 32.1(5) DE LA LOI SUR L'IMMIGRATION LA PRÉSENTE MESURE D'EXPULSION CONDITIONNELLE EST EXÉCUTOIRE À COMPTER DU _____

DATE _____ AT / À _____

_____ OFFICER SIGNATURE / SIGNATURE

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT OF CANADA
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION
LE PRÉSENT DOCUMENT EST LA PROPRIÉTÉ DU GOUVERNEMENT DU CANADA

IMM 1215 (08-92) B

Canada

FOSS, NHQ / *SSOBL, ADMINISTRATION CENTRALE* 3

APPENDIX C
SAMPLE OF IMM 1214 (12–92) B – EXCLUSION ORDER

Employment and Immigration Canada / Emploi et Immigration Canada

V 000 000 000

EXCLUSION ORDER
MESURE D'EXCLUSION

PROTECTED WHEN COMPLETED - *PROTÉGÉ UNE FOIS REMPLI* - B

HEADQUARTER'S USE ONLY - *RÉSERVÉ À L'ADMINISTRATION CENTRALE*

5 4

CASE SERIAL NO. - *Nº DE CAS INITIAL*

CLIENT ID - *ID DU CLIENT*

OFFICE FILE NUMBER
Nº DE RÉFÉRENCE DU BUREAU

SURNAME
NOM

GIVEN NAMES
PRÉNOMS

DATE OF BIRTH
DATE DE NAISSANCE
D-J M Y-A
1 9

COUNTRY OF BIRTH - *PAYS DE NAISSANCE*

COUNTRY OF CITIZENSHIP - *CITOYEN DE*

I HEREBY MAKE AN EXCLUSION ORDER AGAINST YOU PURSUANT TO SUBSECTION 23 (4) OF THE IMMIGRATION ACT BECAUSE I AM SATISFIED THAT YOU ARE A PERSON DESCRIBED IN:

JE PRENDS PAR LES PRÉSENTES UNE MESURE D'EXCLUSION CONTRE VOUS CONFORMÉMENT AU PARAGRAPHE 23 (4) DE LA LOI SUR L'IMMIGRATION PARCE QUE JE SUIS CONVAINCU(E) QUE VOUS ÊTES UNE PERSONNE VISÉE À (AUX)

SIGNED *SIGNÉ LE* — DATE — AT - *À* — SENIOR IMMIGRATION OFFICER - *AGENT PRINCIPAL*

I FULLY UNDERSTAND THE ABOVE DECISION. I ALSO FULLY UNDERSTAND THAT I MUST NOT COME INTO CANADA WITHOUT THE WRITTEN CONSENT OF THE MINISTER OF EMPLOYMENT AND IMMIGRATION AT ANY TIME DURING THE TWELVE MONTH PERIOD IMMEDIATELY FOLLOWING THE DAY ON WHICH I AM REMOVED FROM OR OTHERWISE LEAVE CANADA. SEE BACK OF COPIES 2 AND 4 FOR PRIVACY STATEMENT.

JE COMPRENDS PARFAITEMENT LA DÉCISION INDIQUÉE CI-DESSUS. EN OUTRE, JE COMPRENDS PARFAITEMENT QUE DURANT LES DOUZE MOIS QUI SUIVRONT IMMÉDIATEMENT LA DATE OU J'AI ÉTÉ RENVOYÉ(E) DU CANADA OU CELLE OÙ J'AI PAR AILLEURS QUITTÉ LE CANADA JE NE DOIS PAS Y REVENIR SANS L'AUTORISATION ÉCRITE DU MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION. VOIR AU VERSO DES COPIES 2 ET 4 L'ÉNONCÉ PORTANT SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS.

NAME - *NOM* — SIGNATURE — DATE

I HAVE FAITHFULLY AND ACCURATELY INTERPRETED IN THE _____ LANGUAGE THE INFORMATION PROVIDED ABOVE.

J'AI INTERPRÉTÉ FIDÈLEMENT ET EXACTEMENT EN _____ LES RENSEIGNEMENTS PRÉCITÉS.

NAME - *NOM* — SIGNATURE — DATE

DATE DELIVERED *DATE DE LIVRAISON* D-J M Y-A (149)

DELIVERED *LIVRÉ* ☐ BY MAIL *PAR LA POSTE* ☐ IN PERSON *EN PERSONNE*

OFFICE OF ISSUE - *BUREAU DE DÉLIVRANCE* (155)

IMM 1214 (12-92) B

Canada

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION.
THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT OF CANADA.
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION.
LE PRÉSENT DOCUMENT EST LA PROPRIÉTÉ DU GOUVERNEMENT DU CANADA.

SENIOR IMMIGRATION OFFICER
AGENT PRINCIPAL 1

APPENDIX D

RECIPROCAL ARRANGEMENT BETWEEN THE CANADA EMPLOYMENT AND IMMIGRATION COMMISSION AND THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE, FOR THE EXCHANGE OF DEPORTEES BETWEEN THE UNITED STATES OF AMERICA AND CANADA

1. REQUESTS AND NOTIFICATIONS:

To provide for the orderly and expeditious return of deportees under this Arrangement between the Immigration Services of Canada and the United States, the Service of the deporting country will transmit to the administrative head of the other Service, or a designated representative, the following:

a) A notice of return or a request for consent to return the deportee as specified in Parts II and III of this Arrangement containing such identifying and biographical information as may be necessary to establish that the deportee is returnable under the terms of this Arrangement;

b) Advance notice accompanied by a written opinion of a competent authority confirming the need for institutional care or treatment should the deporting Service possess evidence to suggest that any deportee requires such care or treatment because of a mental or physical condition. The deporting Service will, at the same time as notice is given or consent is sought, provide the receiving Service with advance written notice of the facts and circumstances of the case. The advance notice will be accompanied by a copy of the written opinion regarding institutional care or treatment. At the same time, or as soon as is administratively possible thereafter, the deporting Service will notify the receiving Service of the deportee's travel arrangements;

c) In the case of a deportee who is of interest to law enforcement authorities in the receiving country, advance notice of the facts and circumstances of the case, including travel arrangements, to facilitate procedures at the port of entry;

d) A written notice of the facts and circumstances of a denial of admission and parole or issuance of a minister's permit, whenever an individual is paroled or allowed, pursuant to a minister's permit, into the deporting country for legal proceedings or for humanitarian reasons or to permit the individual to apply for relief under the immigration laws of the deporting country. Such notice will be given immediately after denial of admission and parole or issuance of minister's permit to the immigration official in charge of the port of entry opposite the port of entry where parole was granted or where the minister's permit was issued.

e) A written notice of the facts and circumstances relating to an alien authorized by the Immigration Appeal Board to return to Canada from the United States for the purpose of appearing before the Board for the hearing of the appeal from the removal order issued to that alien. Such notice will be made immediately upon the arrival of the individual in Canada, to the immigration official in charge of the opposite port of entry.

2. NOTICE OF RETURN OF CITIZENS, NATIONALS OR ALIENS:

2.1 Citizens or Nationals

Deportees who are citizens or nationals of Canada or the United States will be received by their country of citizenship or nationality under the terms of this Arrangement.

Before a citizen or national is returned to Canada or the United States, verbal notice will be given in those cases where:

a) Citizenship or nationality in the receiving country can be satisfactorily established by presentation of a birth or baptismal certificate, a certificate of naturalization or citizenship, a valid or expired passport, or other verifiable evidence of citizenship or nationality; and

b) The deportee does not require institutional care or treatment because of a mental or physical condition.

In the case of a citizen or national deportee who requires institutional care or treatment because of a mental or physical condition, written notice will be given to the receiving country.

2.2 Aliens

Aliens of the receiving country, who proceeded directly from the receiving country to the deporting country and were paroled or allowed under the authority of a minister's permit into the deporting country, will be permitted to return to the receiving country under the terms of this Arrangement provided verbal notice is given to the receiving country within one year of revocation or expiration of such parole or minister's permit or from the date of a final order of deportation, whichever is the later.

An alien, as described in Part III, paragraph 2., authorized by the Immigration Appeal Board to return to Canada from the United States for the purpose of appearing before the Board for the hearing of the appeal from the removal order issued to that alien will be permitted to return to the United States provided:

a) the alien met the requirements of Part III paragraphs 2a. and b. at the time the removal order was made; and

b) verbal notice is given to the United States Immigration and Naturalization Service upon the alien's departure from Canada at the conclusion of the hearing.

3. CONSENT TO RETURN ALIENS:

Any of the classes of aliens hereinafter defined, even though such persons would be subject to deportation by the receiving country, will be permitted to return to Canada or the United States under the terms of this Arrangement provided:

a) The alien was admitted to the receiving country for permanent residence and:
   - The alien has not abandoned such residence by residing in a third country; and
   - The alien proceeded directly from the receiving country to the deporting country and was not admitted for permanent residence at that time; and
   - Formal request is made for consent to return the alien within one year from the date of a final order of deportation; and
   - The alien came into the deporting country on or subsequent to August 1, 1949; or

b) The alien was not admitted to the receiving country for permanent residence but:
   - The alien was denied admission at a port of entry and was ordered removed from the deporting country; and
   - The alien proceeded directly from the receiving country to the deporting country; and
   - Formal request for consent to return the alien is made within one year from the date of a final order of removal.

Before a deportee described in paragraphs 1 or 2 above is returned to Canada or the United States, a letter consenting to such return will first be obtained from the receiving Service.

A deportee described in paragraph 2 above will be permitted to return to the United States or Canada under the terms of this Arrangement, provided appropriate arrangements are made in the receiving country for a deportee who requires medical evaluation or institutional care or treatment. The receiving Service will undertake to arrange appropriate reception as expeditiously as possible.

4. TRANSPORTATION AND SUBSISTENCE:

The deporting Service will furnish a deportee with transportation and subsistence to the port of entry of the receiving country closest to the port of exit of the deporting country. Where, however, a deportee does not have sufficient funds to travel to the deportee's last place of residence in the receiving country at the person's own expense, the deporting country will furnish transportation and subsistence to the last place of residence. In exceptional and meritorious cases, transportation and subsistence may be provided to such other place as is acceptable to the deporting Service, provided the receiving Service has no objection to the substitution.

Where a transportation company is liable to carry the deportee, the deportee will be carried to such place as is required by law.

5. VOLUNTARY DEPARTURE:

The return of persons granted voluntary departure as defined in Part X of this Arrangement is not governed by Parts II or III of this Arrangement. Whenever possible, however, such a person will be required to enter the receiving country at the port of entry which is nearest to the place of final destination in the receiving country.

6. PORTS OF ENTRY:

Any deportee returned as provided for in Parts II and III of this Arrangement will be presented to any of the ports of entry listed hereunder for examination or inspection:

CANADA	*UNITED STATES*
Aldergrove, British Columbia	Alcan, Alaska
Armstrong, Quebec	Baltimore/Washington International Airport
Beaver Creek, Yukon Territory	Baltimore, Maryland
Blackpool, Quebec	Bangor, Maine
Calgary International Airport, Calgary, Alberta	Bar Harbor, Maine
Cornwall, Ontario	Blaine, Washington
Coutts, Alberta	Boston, Massachusetts
Douglas, British Columbia	Calais, Maine
Edmonton International Airport, Edmonton, Alberta	Calgary International Airport (Pre–Flight Inspection)
Edmundston, New Brunswick	Champlain, New York
Emerson, Manitoba	Cleveland Airport, Cleveland, Ohio
Fort Erie, Ontario	Derby Line, Vermont
Fort Frances, Ontario	Detroit, Michigan
Fredericton Airport, Fredericton, New Brunswick	Eastport, Idaho
Halifax International Airport, Halifax, Nova Scotia	Edmonton International Airport (Pre–Flight Inspection)
Hamilton Civic Airport	Frontier, Washington
Hamilton, Ontario	Highgate Springs, Vermont
Highwater, Quebec	Houlton, Maine
Huntingdon, British Columbia	International Falls, Minnesota
Kingsgate, British Columbia	Ketchikan, Alaska
Lansdowne, Ontario	Lynden, Washington
London Airport, London, Ontario	Madawaska, Maine
Mississauga, Ontario — Pearson International Airport, Terminals 1 and 2	Massena, New York
Montreal International Airport, Dorval, Quebec	Minneapolis, Minnesota
Montreal International Airport, Mirabel, Quebec	Montreal International Airport, Dorval, Quebec (Pre–Flight Inspection)
Niagara Falls, Ontario	New York, New York
North Portal, Saskatchewan	Niagara Falls, New York
Osoyoos, British Columbia	North Troy, Vermont
Ottawa International Airport, Ottawa, Ontario	Norton, Vermont
Phillipsburg, Quebec	Noyes, Minnesota

CANADA	*UNITED STATES*
Prescott, Ontario	Ogdensburg, New York
Prince Rupert, British Columbia	Oroville, Washington
Quebec International Airport, Quebec City, Quebec	Pittsburgh, Pennsylvania
Regina Airport	Port Angeles, Washington
Regina, Saskatchewan	Port Huron, Michigan
Rock Island, Quebec	Portal, North Dakota
Saint John Municipal Airport, Saint John, New Brunswick	Portland, Maine
St. Leonard, New Brunswick	Raymond, Montana
St. Stephen, New Brunswick	Sault Ste. Marie, Michigan
Sarnia, Ontario	Seattle, Washington
Saskatoon Airport, Saskatoon, Saskatchewan	Sumas, Washington
Sault Ste. Marie, Ontario	Sweetgrass, Montana
Stanhope, Quebec	Thousand Island Bridge, New York
Thunder Bay, Ontario	Toronto, Ontario, Canada — Pearson International Airport, Mississauga, Ontario (Pre–Flight Inspection) (Formerly Toronto International Airport)
Vancouver International Airport, Vancouver, British Columbia	Van Buren, Maine
Victoria, British Columbia	Vancouver International Airport (Pre–Flight Inspection)
Windsor, Ontario	Washington, District of Columbia(Dulles International Airport)
Winnipeg International Airport, Winnipeg, Manitoba	Winnipeg International Airport(Pre–Flight Inspection)
Woodstock, New Brunswick	
Yarmouth, Nova Scotia	

7. OFFICIAL RECORDS AND PRIVACY CONSIDERATION

The United States Immigration and Naturalization Service may use the information supplied by the Immigration Service of Canada for the purpose of ascertaining whether the deportee is wanted by U.S. law enforcement authorities; it may further provide to such authorities information supplied by the Immigration Service of Canada pursuant to this Arrangement for the said purpose and to facilitate the apprehension of the deportee by proper law enforcement authorities.

The United States Immigration and Naturalization Service will not use or disclose information supplied by the Immigration Service of Canada for a purpose or to an authority other than specified in this Arrangement without the written consent of the Immigration Service of Canada.

8. CONSULTATION AND AMENDMENT PROVISIONS:

The Parties agree to discuss matters which are the subject of this Arrangement and to make any amendments considered appropriate. Any disputes or issues of interpretation will be resolved by mutual agreement of the Parties.

9. TERMINATION PROVISION:

This Arrangement remains in full force and effect unless terminated in writing. This Arrangement may be terminated by either Party by giving written notice to the other Party at least one year prior to such termination.

10. DEFINITIONS:

The following terms are defined for the purposes of this Arrangement only, and like terms have a like meaning:

	Canada	*United States*
Admission	Lawful permission to come into Canada as a visitor or to establish permanent residence.	Lawful permission for an alien to enter the United States.
Alien	Any person who is not a Canadian citizen.	Any person who is not a citizen or national of the United States.
Deportee	Any of the persons described in parts II and III of this Arrangement.	Any of the persons described in parts II and III of this Arrangement.
Entry	Lawful permission to come into Canada as a visitor. Visitor means a person who is lawfully in Canada, or seeks to come into Canada for a temporary purpose, other than a Canadian citizen, a permanent resident, a person in possession of a minister's permit, or an immigrant authorized to come into Canada pursuant to paragraph 14(2)(b), 23(1)(b), or 32(3)(b) of the Immigration Act, 1976, as amended.	Any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether voluntarily or otherwise, except that an alien having a lawful permanent residence in the United States shall not be regarded as making an entry into the United States for the purposes of the immigration laws if the alien proves to the satisfaction of the Attorney General that departure to a foreign port or place or to an outlying possession was not voluntary: Provided, that no person whose departure from the United States was occasioned by deportation proceedings, extradition, or other legal process shall be held to be entitled to such exception.
Exclusion	A formal determination of inadmissibility.	A formal determination of inadmissibility.
Final Order of Removal	A signed exclusion order or deportation order not stayed pursuant to the Immigration Act, 1976, as amended.	A signed exclusion order or deportation order ready for execution and unimpeded by legal challenge.
Legal Proceedings	All proceedings authorized or sanctioned by law and brought or instituted in a court of record or administrative tribunal for the recognition of a right or an enforcement of a remedy.	All proceedings authorized or sanctioned by law and brought or instituted in a court of record or administrative tribunal for the recognition of a right or an enforcement of a remedy.
Minister's Permit/ Parole	A valid and subsisting written permit, issued at the discretion of the Minister of Employment and Immigration or a delegate, authorizing an inadmissible person to come into and remain in Canada.	An exercise of discretionary authority of the Attorney General to permit an inadmissible alien to come into the United States for emergent reasons, or for reasons deemed strictly in the public interest.

	Canada	*United States*
Permanent Resident/ Permanent Residence	A person lawfully admitted for permanent residence, who has not become a Canadian citizen and has not ceased to be a permanent resident.	The status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.
Removal Order	An exclusion order or a deportation order.	An exclusion order or a deportation order.
Voluntary Departure	Permission to depart Canada voluntarily granted to a person: a. Against whom a removal order has been made; or b. Who has been issued a departure notice; or c. Who has become the subject of a direction for inquiry or has been arrested for inquiry.	Authorization for a person to depart the United States prior to the commencement of deportation proceedings or subsequent to a deportation hearing.

11. EFFECTIVE DATE:

This Arrangement will be effective on its signature by authorized representatives of the Parties. The present Arrangement will supersede the Arrangement for the Exchange of Deportees between Canada and the United States, of August 1, 1949.

Done in duplicate this 24th day of July A.D., 1987 at Williamsburg, Virginia, United States of America, in English and in French, each language version being equally authentic.

For the Canada Employment and Immigration Commission

James B. Bissett
Executive Director,
Immigration

For the United States Immigration and Naturalization Service,

Department of Justice
Alan C. Nelson
Commissioner

APPENDIX E
SAMPLE OF IMM 56 (12–92) B –
CONFIRMATION/CERTIFICATE OF DEPARTURE

Employment and Immigration Canada / Emploi et Immigration Canada

PROTECTED WHEN COMPLETED - B
PROTÉGÉ UNE FOIS REMPLI

CONFIRMATION/CERTIFICATE OF DEPARTURE
CONFIRMATION/ATTESTATION DE DÉPART

V 070 760 771

HEADQUARTERS' USE ONLY – *RÉSERVÉ À L'ADMINISTRATION CENTRALE*

5 6

CASE SERIAL NO. – *Nº DE CAS INITIAL*

CLIENT ID. – *ID DU CLIENT*

OFFICE FILE NO. – *Nº DE RÉFÉRENCE DU BUREAU*

NOTE: TO BE COMPLETED FOR EACH PERSON DIRECTED TO LEAVE CANADA UNDER REMOVAL ORDER
À REMPLIR POUR CHAQUE PERSONNE ENJOINTE DE QUITTER LE CANADA EN VERTU D'UNE MESURE DE RENVOI
SEE BACK OF COPIES 1, 2 AND 3 FOR PRIVACY STATEMENT.
VOIR AU VERSO DES COPIES 1, 2 ET 3 L'ÉNONCÉ SUR LA PROTECTION DES RENSEIGNEMENTS PERSONELS

A - PARTICULARS OF PERSON CONCERNED – *RENSEIGNEMENTS SUR LA PERSONNE CONCERNÉE*

SURNAME – *NOM*

GIVEN NAMES – *PRÉNOMS*

DATE OF BIRTH / *DATE DE NAISSANCE* — D-J M Y-A — 1 9

TYPE OF TRAVEL DOCUMENT / *GENRE DE DOCUMENT DE VOYAGE* — NUMBER – *NUMÉRO*

PLACE, COUNTRY, DATE OF ISSUE – *LIEU, PAYS ET DATE DE DÉLIVRANCE*

B - OTHER INFORMATION – *AUTRES RENSEIGNEMENTS*

CAUSE FOR REMOVAL – *MOTIF DU RENVOI*

DETAINED FOR REMOVAL / *DÉTENU POUR RENVOI*

LIABILITY – *RESPONSABILITÉ*

TYPE OF ORDER / NOTICE - *GENRE DE MESURE / AVIS*

1 DEPORTATION ORDER / *MESURE D'EXPULSION*
2 EXCLUSION ORDER / *MESURE D'EXCLUSION*
3 DEPARTURE NOTICE / *AVIS D'INTERDICTION DE SÉJOUR*
4 DEPARTURE ORDER / *MESURE D'INTERDICTION DE SÉJOUR*
5 DEEMED DEPORTATION / *RÉPUTÉ AVOIR ÉTÉ EXPULSÉ*

REMOVAL UNDER ESCORT / *RENVOI SOUS ESCORTE*: 1 YES / *OUI* 2 NO / *NON*

APPLICABLE TO DEPARTURE ORDERS:

1) THIS CERTIFICATE IS ISSUED IN ACCORDANCE WITH SECTION 32.01 OF THE IMMIGRATION ACT, FOLLOWING THE ISSUANCE OF A DEPARTURE ORDER AGAINST YOU.
2) SECTION 32.02 OF THE ACT STATES THAT IF THIS CERTIFICATE IS NOT ISSUED WITHIN THE TIME SPECIFIED IN REGULATIONS (30 DAYS) "THE DEPARTURE ORDER IS DEEMED TO BE A DEPORTATION ORDER MADE AGAINST THE PERSON."
3) SECTION 54(1) OF THE ACT STATES THAT "THE ORDER SHALL BE DEEMED NOT TO HAVE BEEN EXECUTED IF THE PERSON IS NOT GRANTED LAWFUL PERMISSION TO BE IN ANY OTHER COUNTRY."

APPLICABLE DANS LE CAS D'UNE MESURE D'INTERDICTION DE SÉJOUR :

1) *LA PRÉSENTE ATTESTATION EST DÉLIVRÉE EN APPLICATION DE L'ARTICLE 32.01 DE LA LOI SUR L'IMMIGRATION PAR SUITE DE LA MESURE D'INTERDICTION DE SÉJOUR PRISE CONTRE VOUS.*
2) *LE PARAGRAPHE 32.02 DE LA MÊME LOI DISPOSE QUE SI L'ATTESTATION DE DÉPART N'EST PAS DÉLIVRÉE DANS LA PÉRIODE RÉGLEMENTAIRE APPLICABLE "LA MESURE D'INTERDICTION DE SÉJOUR DONT EST FRAPPÉ L'INTÉRESSÉ DEVIENT UNE MESURE D'EXPULSION".*
3) *LE PARAGRAPHE 54(1) DE LA MÊME LOI DISPOSE QUE "LA MESURE DE RENVOI EST RÉPUTÉE N'AVOIR JAMAIS ÉTÉ EXÉCUTÉE SI LA PERSONNE QUI EN FAIT L'OBJET N'A PU OBTENIR LA PERMISSION DE SÉJOURNER DANS AUCUN AUTRE PAYS"*

AFFIX PHOTOGRAPH

APPOSER LA PHOTOGRAPHIE

DATE SIGNED - *SIGNÉ LE* — SIGNATURE OF PERSON CONCERNED - *SIGNATURE DE LA PERSONE CONCERNÉE*

REMARKS: INCLUDE NAMES OF FAMILY MEMBERS ACCOMPANYING UNDER A 33(1)
OBSERVATIONS: INCLURE LE NOM DES MEMBRES DE LA FAMILLE QUI L'ACCOMPAGNENT EN VERTU DE L 33(1)

DATE SIGNED / *SIGNÉ LE* — D-J M Y-A — OFFICE OF ISSUE – *BUREAU DE DÉLIVRANCE* — SIGNATURE

C - VERIFICATION OF DEPARTURE (Complete for all persons directed to leave Canada) – *VÉRIFICATION DU DÉPART (À remplir pour toutes les personnes enjointes de quitter le Canada)*

THE ABOVE NAMED PERSON DEPARTED FROM / *LA PERSONNE SUSNOMMÉE A QUITTÉ*

TO FINAL DESTINATION COUNTRY – *AU LIEU DE DESTINATION FINAL (PAYS)*

CARRIER – *TRANSPORTEUR*

TIME – *HEURE*

SIGNATURE OF IMMIGRATION OFFICER / *SIGNATURE DE L'AGENT D'IMMIGRATION*

DATE OF DEPARTURE / *DATE DU DÉPART* — D-J M Y-A

CRU INVOLVED – *CRU IMPLIQUÉ*

BOND DISPOSITION / *DÉCISION QUANT AU CAUTIONNEMENT*: 1 FORFEITED / *CONFISQUÉ* 2 REFUNDED / *REMBOURSÉ*

BACKLOG LEG / *DISP LEG ARRIÉRÉ*

ERRORS / *ERREURS*

UTILITIES / *LIBRES*

IMM 0056 (12-92) B

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

Canada

PERSON CONCERNED / *PERSONNE CONCERNÉE* 1

APPENDIX F
PREROGATIVE WRITS

The principal common-law means for judicial review of the decisions of government tribunals are found in the remedies of *habeas corpus*, *certiorari*, *mandamus* and prohibition. Although they are now regulated by legislation, their origins were in the common law. They are issued only by superior courts: those courts which, historically, did not derive their authority from statute but from the Crown. These remedies are referred to as "prerogative writs", a term which emphasizes that they are issued at the discretion of the court.

Although the function of each writ is somewhat different, the main feature of each is to permit the courts to supervise the actions of inferior tribunals ("inferior" means a court that is subject to the control of a higher court). This supervisory role is not all-encompassing, because the courts are limited in the extent to which they can go beyond the jurisdictional and procedural aspects of a decision to review the actual merits.

1. *HABEAS CORPUS*

This means literally "you have the body". It directs the authority who has an individual in custody to come forward and justify the detention. This centuries-old remedy against arbitrary imprisonment is fundamental to our system of justice.

The detaining authority must make a "return", or response, to the writ, to show that the detention is lawful.

2. *CERTIORARI*

Roughly translated this means "inform me more fully". This writ commands an inferior tribunal to provide its record to the superior court for review "to the end that justice might be done". The result of a successful application will be the quashing of the decision of the tribunal. These writs are not usually issued if there is an appeal process provided by statute.

On *certiorari* the court does not delve into the merits of the case, but questions the jurisdictional and procedural aspects of the decision.

3. *MANDAMUS*

This writ ("we command") is issued to compel the performance of a duty. It is available in cases where the injured party has a right to have a thing done and has no other specific means of compelling its performance. It is used to compel public officers to perform duties imposed upon them by common law or by statute, or to compel tribunals to proceed in matters within their jurisdiction. The person against whom it is issued must be under a legal duty to act in a certain way, must have been asked to act, and must have refused to do so. If granted, the writ compels the performance of the act required.

4. PROHIBITION

This writ is issued to prohibit the exercise of a particular function or act. It is considered to be a sister remedy to *certiorari*; the two differ in the time appropriate for their use. While *certiorari* quashes something already done erroneously, prohibition seeks to prevent an error from either occurring or continuing. Prohibition does not lie until a right to complain has arisen, but it may be sought as soon as an absence of jurisdiction has either arisen or may clearly be foreseen.

APPENDIX G

SAMPLE OF IMM 0419 (05-1998) B - ORDER OF THE DEPUTY MINISTER OF EMPLOYMENT AND CITIZENSHIP AND IMMIGRATION (Under Section 105 of the Immigration Act)

Citizenship and Immigration Canada / Citoyenneté et Immigration Canada

PROTECTED WHEN COMPLETED - A
PROTÉGÉ UNE FOIS REMPLI

ORDER OF THE DEPUTY MINISTER OF CITIZENSHIP AND IMMIGRATION
(under Section 105 of the *Immigration Act*)

ORDONNANCE RENDUE PAR LE SOUS-MINISTRE DE LA CITOYENNETÉ ET DE L'IMMIGRATION
(en vertu de l'article 105 de la *Loi sur l'immigration*)

To: **THE WARDEN, GOVERNOR OR OTHER PERSON IN CHARGE OF THE INSTITUTION CONCERNED**

Pour : **LE GARDIEN, LE DIRECTEUR OU TOUT AUTRE RESPONSABLE DE L'ÉTABLISSEMENT CONCERNÉ**

WHEREAS / ATTENDU QUE _____ a person / , personne à

respecting whom / l'égard de laquelle

- an examination is to be held ☐ / un interrogatoire doit être tenu
- an inquiry is to be held ☐ / une enquête doit être tenue
- a removal order has been made ☐ / une mesure de renvoi a été prise
- a conditional removal order has been made ☐ / une mesure de renvoi conditionnel a été prise

under the terms of the *Immigration Act*, is an inmate of / aux termes de la *Loi sur l'immigration*, a été incarcéré(e) à

_____

I hereby direct that / Je vous enjoins

(a) the person continue to be detained until the expiration of the sentence to which the person is subject or until the expiration of the sentence or term of confinement as reduced by the operation of any statute or other law or by an act of clemency, and

a) d'une part, de continuer à la détenir jusqu'à l'expiration de sa peine ou de la durée de sa détention, compte tenu des éventuelles réductions légales de peine ou des mesures de clémence;

(b) the person be delivered, at the expiration of the sentence or term of confinement referred to in paragraph (a), to an Immigration Officer to be taken into custody.

b) d'autre part, de la remettre par la suite à un agent d'immigration en vue de son placement sous garde.

Dated at / Fait à _____ this / ce _____ day of / jour de _____ of the year / de l'an ____.

_____
Deputy Minister of Citizenship and Immigration
Le Sous-ministre de la Citoyenneté et de l'Immigration

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF CITIZENSHIP AND IMMIGRATION
FORMULAIRE ÉTABLI PAR LE MINISTRE DE LA CITOYENNETÉ ET DE L'IMMIGRATION

IMM 0419 (05-1998) B

Canada

APPENDIX H
NHQ REFERRALS/TRAVEL DOCUMENTS FORM

TO: Removals Unit
Enforcement Branch, NHQ

Fax #: (819) 953–8119
Phone #: (819) 994–2279

FROM: _____ Fax #: _____

_____ Phone #: _____

_____

NAME: _____ ALIAS: _____ MAIDEN: _____

DOB: ____/____/____ (D / M / Y) CITIZENSHIP: _____

DETAINED: ☐ NOT DETAINED: ☐

DATE OF DETENTION: ____/____/____ (D / M / Y)

NAME AND ADDRESS OF EMBASSY/CONSULATE: _____

_____

_____

DATE APPLICATION SUBMITTED TO EMBASSY/CONSULATE: ____/____/____ (D / M / Y)

FOLLOW UP DATE: ____/____/____ (D / M / Y)

REASON FOR REMOVAL: _____

_____

COMMENTS: _____

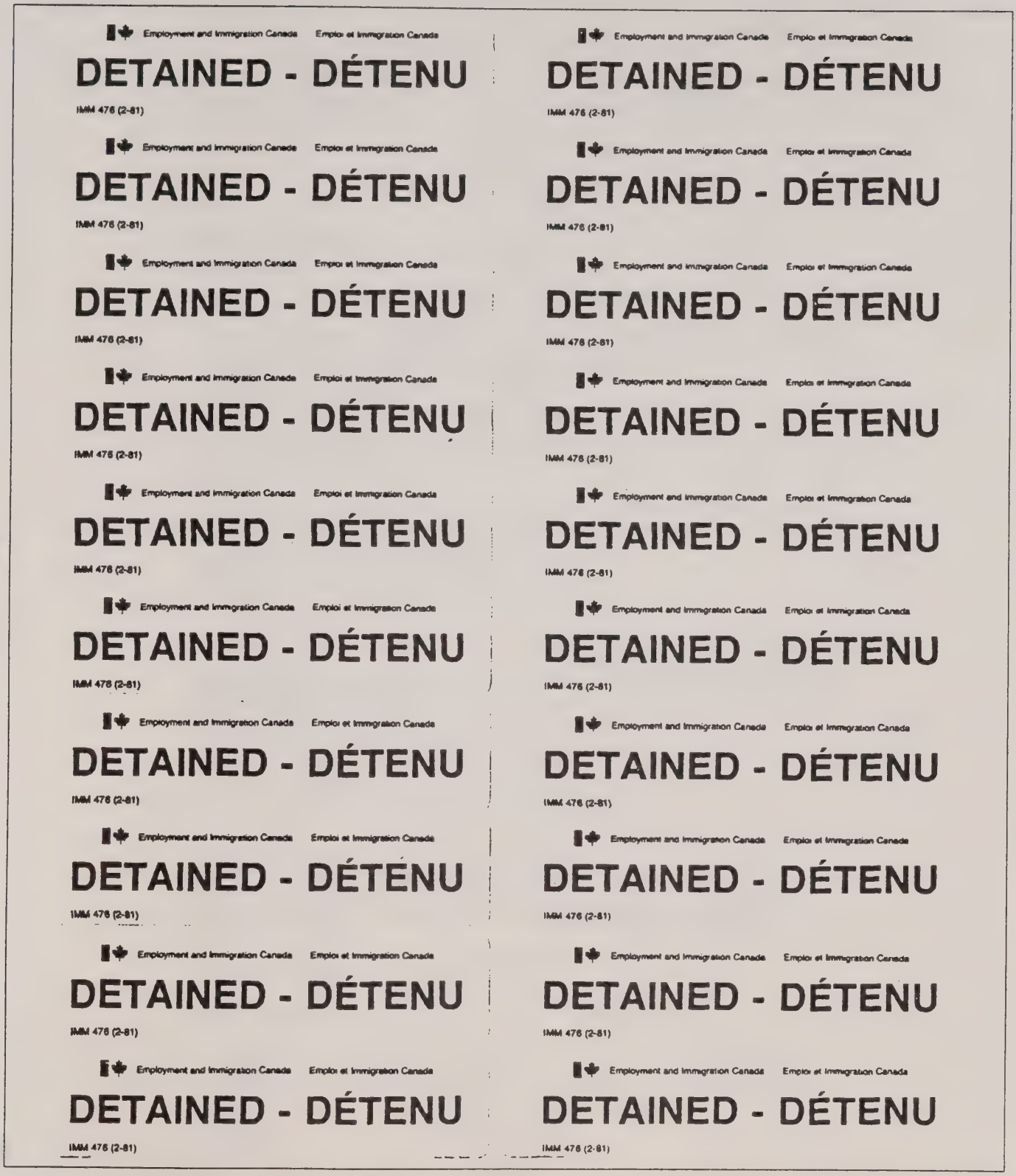
_____

_____

_____

_____
CIC Manager/Chief, CRU

APPENDIX I
SAMPLE OF IMM 476 (2–81) B – DETAINED STICKER



APPENDIX J

SAMPLE OF IMM 1216 (12–92) B – NOTICE OF LIABILITY TO CONVEY AND/OR PAY REMOVAL COSTS

PROTECTED WHEN COMPLETED – A
PROTÉGÉ UNE FOIS REMPLI

Employment and Immigration Canada Emploi et Immigration Canada

NOTICE OF LIABILITY TO CONVEY AND/OR PAY REMOVAL COSTS

AVIS RELATIF À L'OBLIGATION DE TRANSPORTER LA PERSONNE CONCERNÉE ET (OU) DE PAYER SES FRAIS DE RENVOI

(Name & Address of Transportation Company) *(Nom et adresse du transporteur)*

Complete CIC Address – *Adresse complète du CIC*

CIC File No. – *N° de référence du CIC* | Date

CONCERNING: (Full Name of Person Concerned)
CONCERNANT: (Nom complet de la personne concernée) _____

WHO ARRIVED ON YOUR:
QUI EST ARRIVÉ PAR:

☐ FLIGHT NO. *LE VOL N°* _____ ☐ BUS NO. *L'AUTOBUS N°* _____ ☐ TRAIN NO. *LE TRAIN N°* _____ ☐ NAME OF VESSEL *NOM DU NAVIRE* _____

ON *LE* _____ (D-J M Y-H) TICKET SERIAL NO. *N° DE SÉRIE DU BILLET* _____ ☐ ATTACHED *CI-JOINT* ☐ NOT AVAILABLE *NON DISPONIBLE*

YOUR ATTENTION IS DIRECTED TO SECTIONS 85, 86 AND 87 OF THE IMMIGRATION ACT, AS AMENDED.
VEUILLEZ VOUS REPORTER AUX ARTICLES 85, 86 ET 87 DE LA LOI SUR L'IMMIGRATION, TELS QUE MODIFIÉS.

☐ IN VIEW OF THE FACT THAT THE PERSON NAMED ABOVE IS THE SUBJECT OF:
COMME LA PERSONNE PRÉCITÉE FAIT L'OBJET:

☐ A Deportation Order on Form IMM 1215; *d'une mesure d'expulsion (IMM 1215);*
☐ An Exclusion Order on Form IMM 1214; *d'une mesure d'exclusion (IMM 1214);*
☐ A Rejection Order on Form IMM 1217; *d'une mesure de refoulement (IMM 1217),*
☐ A Direction to Return to the United States Pursuant to Subsection _____ of the Act, on Form IMM 1237, IMM 1238 or IMM 5010, as applicable;
d'une directive l'enjoignant de retourner aux États-Unis conformément au paragraphe _____ *de la Loi (IMM 1237, IMM 1238 ou IMM 5010, selon le cas);*

OR/OU

☐ IN VIEW OF THE FACT THAT THE PERSON NAMED ABOVE IS ALLOWED TO LEAVE CANADA PURSUANT TO SUBSECTION _____ OF THE IMMIGRATION ACT, (FORM IMM 1282);
COMME LA PERSONNE PRÉCITÉE EST AUTORISÉE À QUITTER LE CANADA CONFORMÉMENT AU PARAGRAPHE _____ *DE LA LOI SUR L'IMMIGRATION (IMM 1282);*

☐ You are hereby given notice of liability for removal and detention costs.
vous êtes par les présentes avisé que vous devez payer les frais de renvoi et de garde;

☐ You are hereby ordered to convey or cause the person named above to be conveyed to
vous êtes par les présentes enjoint de transporter ou de faire transporter la personne précitée à

_____

Signature of Immigration Officer or Senior Immigration Officer
Signature de l'agent d'immigration ou de l'agent principal

WHEN TRANSPORTATION ARRANGEMENTS HAVE BEEN FINALIZED, PLEASE COMPLETE THE FOLLOWING STATEMENT AND RETURN COPY 2 (PINK) OF THIS FORM TO THE ADDRESS SHOWN ABOVE.
UNE FOIS RÉGLÉES LES MODALITÉS DE TRANSPORT, VEUILLEZ REMPLIR LA DÉCLARATION SUIVANTE ET RENVOYER LA FEUILLE 2 (ROSE) DU PRÉSENT FORMULAIRE À L'ADRESSE INDIQUÉE CI-DESSUS.

STATEMENT OF CONVEYANCE – *DÉCLARATION RELATIVE AU TRANSPORT*
We have arranged to have the person named above conveyed to
Nous avons pris des dispositions pour que la personne précitée soit transportée à _____ (Destination)

Leaving – *De* _____ (Port of Departure – *Point de départ*) on – *par* _____ (Flight Number or Name of Vehicle – *N° du vol ou nom du véhicule*) on – *le* _____ (Date)

At _____ Hours. Removal and detention costs, if applicable, will be borne by this company.
À _____ *H. Ledit transporteur assumera les frais de renvoi et de garde, s'il y a lieu.*

Name of Transportation Company *Nom du transporteur* | Signature of Company Official *Signature du représentant du transporteur* | Date

If, pursuant to paragraph 85(1)(a) of the Immigration Act, conveyance is to be to a country requiring approval of the Minister of Employment and Immigration, complete the pertinent items hereunder and return both copies 1 (white) and 2 (pink) to the above address for appropriate signature. Copy 1 will be returned to you following application of signatures. – *Si, conformément à l'alinéa 85(1)a) de la Loi sur l'immigration, le transport doit se faire vers un pays devant être approuvé par le Ministre de l'Emploi et de l'Immigration, veuillez remplir les espaces pertinents ci-dessous et renvoyer les deux feuilles, c.-à-d. 1 (blanche) et 2 (rose), à l'adresse ci-dessus pour que les personnes compétentes les signent. La feuille 1 vous sera ensuite renvoyée.*

It is agreed by the parties concerned that the person concerned may be conveyed to _____ (Name of Country – *Nom du pays*)
Il est convenu par les intéressés que la personne concernée peut être transportée à

Signature & Title of Company Official *Signature et titre du représentant du transporteur* | Date

Signature of the Minister or his Delegate *Signature du Ministre ou de son délégué* | Date

NOTE: For a greater understanding of the obligations of transportation companies under the Immigration Act, write to Immigration HQ, Ottawa, Ontario K1A 0J9 for a free set of transportation directives.
NOTA: Si vous désirez être mieux informé des obligations que doivent remplir les transporteurs aux termes de la Loi sur l'immigration, veuillez écrire à l'Administration centrale d'Immigration Canada à Ottawa (Ontario) K1A 0J9, pour obtenir une série gratuite des directives concernant le transport.

IMM 1216 (12-92) B THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

Canada

TRANSPORTATION COMPANY
POUR LE TRANSPORTEUR

1

APPENDIX K

SAMPLE OF IMM 1253 (08–92) B – NOTICE OF REMOVAL AND PROFILE

Employment and Immigration Canada / Emploi et Immigration Canada

PROTECTED WHEN COMPLETED - B
PROTÉGÉ UNE FOIS REMPLI

NOTICE OF REMOVAL & PROFILE - *AVIS DE RENVOI ET RENSEIGNEMENTS*

NOTE: THIS FORM TO BE COMPLETED IN EVERY AIR REMOVAL CASE AND PRESENTED TO AIRLINE AUTHORITIES AT LEAST 48 HOURS PRIOR TO DEPARTURE.

NOTA: CE FORMULAIRE DOIT ÊTRE REMPLI POUR TOUTE PERSONNE RENVOYÉE PAR AVION ET ÊTRE PRÉSENTÉ AUX RESPONSABLES DU TRANSPORTEUR AÉRIEN AU MOINS 48 HEURES AVANT LE DÉPART.

FILE No. - *Nº DE RÉFÉRENCE*

TO / *POUR* _____
(NAME OF TRANSPORTATION COMPANY - *NOM DE LA SOCIÉTÉ DE TRANSPORT*)

A RESERVATION ON YOUR FLIGHT No. / *UNE RÉSERVATION SUR VOTRE VOL Nº* _____ OF / *DU* _____ (DATE) DESTINATION TO / *À DESTINATION DE* _____ (COUNTRY, CITY, AIRPORT - *AÉROPORT, VILLE, PAYS*)

HAS BEEN MADE FOR THE FOLLOWING PERSON WHO IS UNDER REMOVAL ORDER FROM CANADA UNDER SUBSECTION / *A ÉTÉ EFFECTUÉE POUR LA PERSONNE SUIVANTE VISÉE PAR UNE MESURE DE RENVOI PRISE CONTRE ELLE AUX TERMES DU PARAGRAPHE* _____ OF THE IMMIGRATION ACT. / *DE LA LOI SUR L'IMMIGRATION.*

FAMILY NAME / *NOM DE FAMILLE* _____ GIVEN NAME(S) / *PRÉNOM(S)* _____

SEX / *SEXE* ☐ M ☐ F DATE OF BIRTH / *DATE DE NAISSANCE* _____ CITIZEN OF / *CITOYEN(NE) DE* _____

PASSPORT/TRAVEL DOCUMENT No. / *PASSEPORT/DOCUMENT DE VOYAGE Nº* _____ OR / *OU* ☐ NO DOCUMENT / *AUCUN DOCUMENT*

LIABILITY FOR REMOVAL / *RESPONSABILITÉ FINANCIÈRE DU RENVOI* ☐ CARRIER / *TRANSPORTEUR* ☐ CEIC / *CEIC*

A CEIC ESCORT / *UN SERVICE D'ESCORTE* ☐ IS / *EST* ☐ IS NOT / *N'EST PAS* PROVIDED / *FOURNI PAR LA CEIC*

IF A CEIC ESCORT IS PROVIDED, THE REASON IS AS FOLLOWS:
LE CAS ÉCHÉANT, CE SERVICE EST FOURNI POUR LA RAISON SUIVANTE:

_____

_____

_____

_____

_____

_____

_____

THE ABOVE PHOTOGRAPH MUST MATCH EXACTLY THE ONE WHICH WILL APPEAR ON THE IMM 1226 DOCUMENT ENVELOPE TO BE EITHER PRESENTED TO THE FLIGHT ATTENDANT UPON DEPARTURE OR CARRIED BY THE ESCORT.

LA PHOTO CI-DESSUS DOIT ÊTRE IDENTIQUE À CELLE FIGURANT SUR L'ENVELOPPE (IMM1226) QUI DOIT ÊTRE REMISE À L'AGENT DE BORD AU DÉPART OU CONSERVÉE PAR L'AGENT D'ESCORTE DURANT LE TRAJET

THE INFORMATION PROVIDED ON THIS FORM IS COLLECTED UNDER THE AUTHORITY OF THE IMMIGRATION ACT FOR THE PURPOSE OF GIVING THE TRANSPORTATION COMPANY NAMED ABOVE ADVANCE NOTICE OF THE REMOVAL OF THE PERSON NAMED ON THE FACE OF THIS FORM AND, IF APPLICABLE, OF ANY ACCOMPANYING FAMILY MEMBERS. THIS INFORMATION WILL BE STORED IN PERSONAL INFORMATION BANK(S) NUMBER EIC PPU 225, 285 AND/OR 300 AND IS PROTECTED AND ACCESSIBLE UNDER THE PROVISIONS OF THE PRIVACY ACT AND THE ACCESS TO INFORMATION ACT.

LES RENSEIGNEMENTS FOURNIS DANS LE PRÉSENT FORMULAIRE SONT RECUEILLIS EN VERTU DE LA LOI SUR L'IMMIGRATION AUX FINS DE DONNER À LA SOCIÉTÉ DE TRANSPORT NOMMÉE CI-HAUT UN PRÉAVIS DU RENVOI DE LA PERSONNE NOMMÉE AU RECTO DU PRÉSENT FORMULAIRE ET, S'IL Y A LIEU, DES MEMBRES DE LA FAMILLE QUI L'ACCOMPAGNENT. LES RENSEIGNEMENTS SERONT VERSÉS DANS LE(S) FICHIER(S) DE RENSEIGNEMENTS PERSONNELS CEI PPU 225, 285 ET (OU) 300 ET SONT PROTÉGÉS ET ACCESSIBLES EN VERTU DES DISPOSITIONS DE LA LOI SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS ET DE LA LOI SUR L'ACCÈS À L'INFORMATION.

NAMES OF ACCOMPANYING FAMILY MEMBERS (IF APPLICABLE) / *NOMS DES MEMBRES DE LA FAMILLE QUI ACCOMPAGNENT (S'IL Y A LIEU)*	FULL NAME(S) OF ESCORT OFFICERS (IF APPLICABLE) / *NOMS AU COMPLET DES AGENTS D'ESCORTE (S'IL Y A LIEU)*

_____ (CIC) _____ (DATE) _____ (SIGNATURE OF IMMIGRATION OFFICER - *SIGNATURE DE L'AGENT D'IMMIGRATION*)

Canada

IMM 1253 (08-92) B

COPY 1 - AIRLINE COMPANY
FEUILLE 1 - TRANSPORTEUR AÉRIEN

APPENDIX L
OVERSEAS INVESTIGATION AND CONTROL OFFICES

ACCRA

Office Hours:
Mon Thurs: 07:30–16:00, Fri: 07:30–13:00

ICO: Mr. Ante (Tony) Milic

Office:
Canadian High Commission
42 Independence Avenue
ACCRA, Ghana

Tel.: (011–233–21)22–85–55, 77–37–91
Fax: (011–233–21) 77–37–92

BACK–UP:
Rob Tanner
27 Volta Road, Airport Area
ACCRA, Ghana
Home Phone 77–71–07

BANGKOK

Office Hours:
Mon – Thurs: 07:30–12:15/13:00–16:15,
Fri: 07:30–13:00

ICO: Mr. Jean–Pierre Cliche

Office:
Canadian Embassy
138 Silom Road, 11th Floor
Boonmitr Building
BANGKOK 10500, Thailand

Tel.: (011–66–2) 238–4452
Mobile Tel: (011–66–2) 480–8966
Mitnet: 340–3478
Fax: (011–66–2) 236–7467
Mitnet Fax: 340–3492

BERNE

ICO [De facto]: Mr. Serge Drapeau

Office Hours:
Mon – Fri: 08:00 – 12:00113:15 – 16:45

Summer Hours:
Mon – Fri: 08:00–12:00 – 12:30–16:00

Office:
The Canadian Embassy
Immigration Service
Kirchenfeldstrasse 88
3005 BERNE, Switzerland

Tel.: (011–41–31)352 6381185
Fax: (011–41–31) 352 7315
Mitnet: 440–0000
Mitnet Fax: 440–2251

BONN

Office Hours:
Mon to Fri: 08:00 – 16:00,
Public: 08:00 – 12:00, 13:00 – 15:00

lCO: Mr. Stephan Hesse

Office:
Canadian Embassy
Godesberger Allee 119, D–530
BONN 2, Germany

Immig.: (011–49–228) 81–00–62
Photophone: (011–49–228) 81–00–62
Fax: (011–49–228) 37–65–25
Mitnet: 449–0000 (General Number)
Mitnet: 449–3458

BRUSSELS

Heures du bureau:
Lun – ven: 08:30 – 17:30

ICO: Mr. Rena Bersma

Office:
Ambassade du Canada
Avenue de Tervuren 2
1040 BRUXELLES
Belgique

Tel.: (011–32–2) 735–60–40
Fax: (011–32–2) 735–33–83/732–67–90
Photophone: (01 1–32–2) 735–60–40,
ext. 3499 (office hours only)
Mitnet: 448–3211
Mitnet Fax: 448–3301

BUDAPEST

Office Hours:
Mon – Fri: 08:00–16:30

lCO: Mr. James L. Bissett

Office:
The Canadian Embassy
Budakeszi ut. 32
1121 Budapest
Hungary

Tel.: (011–36–1) 275–1200
Night Lines: (011–36–1) 275–1204/1207/1208
Fax: (011–36–1) 275–1210

S–Fax: (011–36–1)1762–574
Imm. Fax: (011–36–1) 275–1215
Telex: (224588 CDA H)

BUENOS AIRES

Office Hours:
Mon – Thurs: 08:30–17:30, Fri: 08:30–14:00

ICO: Mr. Kent Francis

Office:
Canadian Embassy
Tagle 2828
1425 BUENOS AIRES
Argentina

Tel Imm: (011–54–1)806–1212
Fax: (011–54–1) 806–1209
Mitnet: 381–0000

CAIRO

Office Hours:
Sun – Thurs: 07:30–15:00

ICO: Mr. Louis Dumas

Office:
Canadian Embassy
6 Mohamed Fahmy el Sayed St.
Garden City, CAIRO
Egypt

Tel.: (011–202) 354–3110
After hours: (011–202) 354–3158
Fax: (011–202) 356–3548

COLOMBO

Office Hours:
Mon – Thurs: 08:00–16:35, Fri: 08:00–13:10

ICO: Mr. Bruce Scoffed

Office:
Canadian High Commission
6 Gregory's Road
Cinnamon Gardens
COLOMBO, Sri Lanka

Tel.: (011–94–1) 69–5841142/43
Night Line: (011–94–1) 69–5845
Visa Section: 69–5845, 68–7815
Fax: (011–94–1) 68–7049

DAMASCUS

Office Hours:
Mon – Thurs: 07:30 – 15:20, Fri: 07:30 – 13:40

ICO: Mr. Frank E. Dunham

Office:
The Canadian Embassy
Lot 12 Mezzah Autostrade
DAMASCUS, Syria

Tel.: (011–963–11) 236–851, 236–892
Fax: (011–963–11) 228–034 (not reliable)

HONG KONG

Office Hours:
Mon, Tues, Thurs, Fri: 08:00–12:30,
13:15–17:00
Wed: 08:00–12:30

ICOs: Mr. Jean–Paul Delisle,
Mr. Philippe Girard

Office:
Commission for Canada
11–14th, Tower 1
Exchange Square
8 Connaught Place

Tel.: (011–852) 846–7421 (Jean–Paul Delisle)
847–7405 (Philippe Girard)
Fax: (011–852) 867–7367 (ICO dedicated fax)
S–Fax: (011–852) 847–7401
Mobile Tel.: (011–852) 902–92781 (Jean–Paul)
Mobile Tel.: (011–852) 903–28651 (Philippe)
Photonhone: (011–852) 847–7476 (Philippe)
Mitnet: 343–0000
Mitnet Fax: 343–3920

Assistant: Margaret Lam (011–852) 847–7465
(Jean–Paul)
Assistant: Lee Clement (011–852)867–7395
(Philippe)

ISLAMABAD

Office Hours:
Sun – Thurs: 08:00–16:00

ICO: Mr. Ron Molsberry

Office:
Canadian High Commission
Visa Section
Diplomatic Enclave No. 5
ISLAMABAD, Pakistan

Tel.: (011–92–51) 211–101/04, 05 EXT 392
Visa Section: (O11–92–51) 211–104, ext 392
Fax: (011–92–51) 211–540

KINGSTON

Office Hours:
Mon – Thurs: 08:00–16:30, Friday: 08:00–13:30

ICO: Mr. Larry Carroll

Office:
Canadian High Commission
Immigration Section – 1st Floor
Visa Section – 4th Floor
30–36 Knutsford Boulevard
P.O. Box 1500
KINGSTON 5, Jamaica W.I.

Tel.: (1–809) 926–1500–7
Fax: (1–809) 986–7159
Mitnet: 333–0259

LAGOS

ICO [De facto]: Mr. Peter Marshall

Office:
Canadian High Commission
Committee of Vice–Chancellors Bldg.
Plot 8A, 4 Idowu–Taylor St.
VICTORIA ISLAND, Nigeria

Tel.: (011–234–1) 269–2915
Fax: (011–234–1) 269–2919

LONDON

Office Hours:
Mon – Fri: 08:45–17:00

ICO: Mr. Michael Francomb

Office:
Canadian High Commission
Immigration Division
38 Grosvenor Street
LONDON W1X0AA
England

Tel.: (011–44–71) 258–6600
Fax: (011–44–71) 258–6506
Mitnet: 445–3507
Mitnet Fax: 445–3506

MANILA

Office Hours:
Mon – Fri: 08:30–16:30

ICO [De facto]: Mr. Alan Martin

Office:
Canadian Embassy
9th Floor, Allied Bank Centre
6754 Ayala Avenue, Makati
Makati, METRO MANILA 1200
Philippines

Tel.: (011–63–2) 815–9536
After 15:15: (011–63–2) 238–4452/3/4
Fax: (011–63–2) 815–9595
Mitnet: 346–3405
Mitnet Fax: 346–3925 (Immigration)

MIAMI

Office Hours:
Mon – Fri: 08:00 – 17:00, Wed: 08:00 – 13:30

ICO: Ms. Deborah Chatsis

Office:
Canadian Embassy
200 South Biscayne Boulevard
Suite 1600
Miami, Florida 33131
U.S.A.

Tel.: 1(305)579–1600
Fax: 1(305) 374–6774
Mitnet: 368–3802
Mitnet Fax: 368–3900

MOSCOW

Office Hours:
Mon – Fri: 08:30–13:00, 14:00–17:00

ICO: Mr. Graeme MacIntyre

Office:
Canadian Embassy
Visa Section
23 Starokonushenny Pereulok
MOSCOW, U.S.S.R.

Tel.: (011–7–095) 241–1111
Night Line: (011–7–095) 241–4232
Mitnet: 453–3405
Fax: (011–7–095) 241–4400
Mitnet Fax: 453–3927

NAIROBI

Office Hours:
Mon – Thurs: 07:30–12:30, 13:30–16:30,
Fri: 07:30–13:00

ICO: Ms Paula Bennett

Office:
Canadian High Commission
Comcroft House, 5th Floor
Haile Selassie Avenue
NAIROBI, Kenya

Tel.: (011–254–2) 214–804
Fax: (011–254–2) 226–987

NEW DELHI

Office Hours:
Mon – Thurs: 08:30–17:30, Fri: 08:30–13:00

ICO: Mr. Don Solomon

Office:
Canadian High Commission
Shantipath, Chanakyapuri
NEW DELHI 110021, India

Tel.: (011–91–11) 687–6500
Fax: (011–91–11) 687–6579
Mitnet: 355–0000
Mitnet Fax: 355–3912

BACKUP:
Brad Niblock
El/Il Vasant Vihar
Tel. (H): (011–91–11) 600–790

PARIS

Heures du bureau:
Lun – ven: 08:30–12:00, 14:00–17:00

ICO: M. Hercule Raymond

Office:
Ambassade du Canada
35, avenue Montaigne
75008 PARIS, France

Tel.: (011–33–1) 44–43–29–00 (General)
(011–33–1) 44–43–24–02 (Direct)
Fax: (011–33–1) 44–43–29–93
Tel Mitnet: 447–2402
Fax Mitnet: 447–2993

ROME

Office Hours:
Mon – Fri: 08:00 – 16:30

ICO: Ms Chantale Ouellette

Office:
Canadian Embassy
via Sara, 30
00198 ROME, Italy

Tel.: (011–39–6) 44–03–028
Mitnet: 455–0000
Fax: (011–39–6) 44–03–063
Mitnet Fax: 455–2905

SAO PAULO

Office Hours:
Mon – Thurs: 08:00–17:30, Fri: 08:00–14:00

ICO: Mr. Luc Le Francois

Office:
The Consulate General of Canada
Edificio Top Center
Avenida Paulista 854, 5th Floor
01310–913 SAO PAULO
Brazil

Tel.: (011–55–11) 285–5099
Fax: (011–55–11) 285–5659

SEOUL

Office Hours: Mon – Fri: 09:00–17:00

ICO [De facto]: Mr. John Choi

Office:
Canadian Embassy
Kolon Building, 10th & 11th Floor
45 Mugyo–dong, Jung–ku
SEOUL, Korea

Tel.: (011–82–2) 753–2605/–8, 753–7290/3
Mitnet: 348–0000
Immig Section (011–82–2) 753–6684/5
Fax: (011–82–2) 755–0680
Mitnet Fax: 348–3930

SINGAPORE

Office Hours:
Mon – Fri: 08:00– 12:30, 13:30–16:30

ICO: Mr. John Rose

Office:
Canadian High Commission
80 Anson Road
15–01 IBM Towers
SINGAPORE 0207
Republic of Singapore

Tel.: (011–65) 225–6363
Night Line: (011–65) 225–0201
Fax: (011–65) 225–2450
Mitnet Fax: 350–3270

STOCKHOLM

ICO [De facto]: Mr. Paul Trueman

Office Hours:

Office:
The Canadian Embassy
Teglebacken 4, 7th Floor
Box 161 29,
S–103 23 Stockholm, Sweden

Tel.: (011–46–8) 613–99–00
Mitnet: 461–0000
Fax: (011–46–8) 791–8009
Imm. Mitnet: 461–3362

TAIWAN

Office Hours:
Mon – Fri: 08:30–17:30

ICO [De facto]: Mr. John McEachern

Office:
Canadian Trade Office
13th Floor
365 Fu Hsing North Road
TAIPEI, Taiwan

Tel.: (011–886–2) 713–7268
Visa Section: (011–886–2) 514–0056
Fax: (011–886–2) 712–7244

Imm Fax: (011–886–2) 514–0067
Telex: 29484 CANTAI
Cellular Phone: (011–886–9)004–1974

THE HAGUE

Office Hours:
Mon – Fri: 08:30–13:00, 14:00–17:00

ICO: Mr. Oakley Duff

Office:
Canadian Embassy
25 Parkstraat
2514 JD, THE HAGUE
Netherlands

Tel.: (011–31–70) 361–5228
361–4111 (after hours)
Immigration: (011–31–70) 361–4611
Mitnet: 442–2283
Fax: (011–31–70) 356–2823
Mitnet Fax: 442–3351
Photophone (office hours only): (011–31–70)
361–5228, ext 279

TOKYO

Office Hours:
Mon – Fri : 09:00–17:30

ICO: Mr. Joe Greenholtz

Office:
Canadian Embassy
3–38, Akasaka 7–Chome
Minato–ku
TOKYO 107, Japan

Tel.: (011–81–3) 3408–2101
Visa Sec Fax: (011–81–3) 3403–8357

WARSAW

Office Hours:
Mon – Fri: 08:30–16:30

ICO: Mr. Tom Tass

Office:
Canadian Embassy
Immigration Section
00–481 WARSAW, Poland

Tel.: (011–48–22)29–80–51/ 59
Night Line: (011–48–22) 29–80–54
Fax: (011–48–22) 29–64–57

WASHINGTON

Office Hours:
Mon – Fri: 09:00–17:00

ICO: Ms. Patricia McKenzie

Office:
Canadian Embassy
501 Pennsylvania Ave. N.W.
WASHINGTON, D.C. 20001

Tel.: (1–202) 682–1740
Fax: (1–202) 682–7726

APPENDIX M
THE STATUS OF PERSONS LIVING IN U.S. TERRITORIES AND PROTECTORATES

1. **U.S. CITIZENS (NON–VOTING)**

   Guam

   Northern Mariana Islands

   Puerto Rico

   Virgin Islands

2. **U.S. NATIONALS**

   American Samoa

   Palau

3. **NON–U.S. CITIZENS/NON–U.S. NATIONALS**

   Marshall Islands

   Micronesia

APPENDIX N
SAMPLE WORDING OF A LETTER FOR THE RETURN OF NON–RESIDENT ALIENS

TO: Port Director
United States Immigration and
Naturalization Service

FROM: Manager
Canada Immigration Centre

Re: Return of Non–Resident Alien – Reciprocal Arrangement – Section III.2

Name:

Date of Birth:

Citizenship:

Date of Arrival at a Canadian Port of Entry: _____ 19____.

Please be advised that the above subject has been denied admission and may subsequently be ordered removed from Canada.

The subject proceeded to this port directly from the United States, and has been denied admission to Canada at this port. Inquiry action which may result in the person being ordered removed from Canada is being initiated.

If inquiry action results in the issuance of a removal order, a request for the subject's return to the U.S.A. will be made in the appropriate manner pursuant to Part III.2.c. of the Reciprocal Arrangement.

I trust this information will assist with the effective implementation of the Reciprocal Arrangement.

_____ _____
Date Signature

APPENDIX O
SAMPLE OF IMM 1443 (06–87) B – NOTICE OF ISSUANCE OF MINISTER'S PERMIT

Employment and Immigration Canada / Emploi et Immigration Canada

Date :

To : Port Director,
United States Immigration and
Naturalization Service

From : Manager
Canada Immigration Centre

Notice of issuance of Minister's permit (reference Part I.D. of the Reciprocal Arrangement for the Exchange of Deportees between Canada and the United States) in the matter of

Name
Date of Birth
Citizenship
Minister's permit No
Date Issued
Issued By

IMM 1443 (06-87)

Date :

A : Directeur du point d'entrée
Service d'immigration et de
naturalisation des États-Unis

De : Directeur
Centre d'immigration du Canada

La présente a pour objet de vous aviser de la délivrance d'un permis du Ministre (consulter la partie I.D. de l'Arrangement de réciprocité concernant l'échange de personnes expulsées entre le Canada et les États-Unis) en ce qui concerne

Nom
Date de naissance
Citoyenneté
Nº du permis du Ministre
Date de délivrance
Délivré par

Canada

APPENDIX P

SAMPLE OF IMM 1217 (12–92) B – REJECTION ORDER UNDER SECTION 13 OF THE *IMMIGRATION ACT*

Employment and Immigration Canada / Emploi et Immigration Canada

PROTECTED WHEN COMPLETED - A
PROTÉGÉ UNE FOIS REMPLI

REJECTION ORDER UNDER SECTION 13 OF THE IMMIGRATION ACT

MESURE DE REFOULEMENT AUX TERMES DE L'ARTICLE 13 DE LA LOI SUR L'IMMIGRATION

FOSS ID - IDENT. SSOBL

FILE NO. - *Nº DE RÉFÉRENCE*

TO / *POUR* ▶ SURNAME OF PERSON CONCERNED - *NOM DE LA PERSONNE CONCERNÉE* | FIRST NAME AND INITIALS - *PREMIER PRÉNOM ET INITIALES*

ADDRESS - *ADRESSE*

DATE OF EXAMINATION - *DATE DE L'INTERROGATOIRE* | PORT OF ENTRY - *POINT D'ENTRÉE* | PROVINCE

YOU ARE HEREBY REJECTED UNDER SECTION 13 OF THE IMMIGRATION ACT SEE PRIVACY STATEMENT ON THE REVERSE OF THIS FORM.

UNE MESURE DE REFOULEMENT EST PAR LES PRÉSENTES RENDUE CONTRE VOUS AUX TERMES DE L'ARTICLE 13 DE LA LOI SUR L'IMMIGRATION. VOIR AU VERSO DU PRÉSENT FORMULAIRE L'ÉNONCÉ PORTANT SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS.

SIGNATURE OF IMMIGRATION OFFICER - *SIGNATURE DE L'AGENT D'IMMIGRATION* | DATE

NOTICE TO TRANSPORTATION COMPANY CONCERNED
(Where applicable)

UNDER THE TERMS OF SECTION 85 OF THE IMMIGRATION ACT, AS AMENDED, YOU ARE HEREBY ORDERED TO CONVEY, OR CAUSE THE ABOVE-NAMED PERSON TO BE CONVEYED, TO THE PLACE FROM WHICH THAT PERSON CAME TO CANADA, OR TO SUCH OTHER COUNTRY AS THE MINISTER MAY APPROVE AT YOUR REQUEST.

AVIS AU TRANSPORTEUR CONCERNÉ
(S'il y a lieu)

EN APPLICATION DE L'ARTICLE 85 DE LA LOI SUR L'IMMIGRATION, TELLE QUE MODIFIÉE, VOUS ÊTES PAR LES PRÉSENTES ENJOINT DE TRANSPORTER OU DE FAIRE TRANSPORTER LA PERSONNE PRÉCITÉE À L'ENDROIT D'OÙ ELLE EST VENUE AU CANADA, OU À TOUT AUTRE PAYS APPROUVÉ PAR LE MINISTRE À VOTRE DEMANDE.

SIGNATURE OF IMMIGRATION OFFICER - *SIGNATURE DE L'AGENT D'IMMIGRATION* | DATE

NOTE: For a greater understanding of the obligations of transportation companies under the Immigration Act, write to Immigration HQ, Ottawa, Ontario K1A 0J9 for a free guide concerning transportation company obligations.

NOTA: *Si vous désirez être mieux informé des obligations que doivent remplir les transporteurs aux termes de la Loi sur l'immigration, veuillez écrire à l'Administration centrale d'Immigration Canada à Ottawa (Ontario) K1A 0J9, pour obtenir sans frais un guide concernant les obligations des transporteurs.*

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

IMM 1217 (12-92) B

PERSON CONCERNED - *PERSONNE CONCERNÉE* 1

Canada

APPENDIX Q

SAMPLE OF IMM 1237 (12–92) B – DIRECTION TO RETURN TO THE UNITED STATES (UNDER SUBSECTION 20(2) OF THE *IMMIGRATION ACT*)

Employment and Immigration Canada / Emploi et Immigration Canada

PROTECTED WHEN COMPLETED / PROTÉGÉ UNE FOIS REMPLI - A

DIRECTION TO RETURN TO THE UNITED STATES
(UNDER SUBSECTION 20(2) OF THE IMMIGRATION ACT)

ORDONNANCE DE RETOURNER AUX ÉTATS-UNIS
(AUX TERMES DU PARAGRAPHE 20(2) DE LA LOI SUR L'IMMIGRATION)

Surname – *Nom de famille*	Given Names – *Prénom(s)*	FOSS ID No. – *N° d'ID SSOBL*
Date of Birth / *Date de naissance* D–J M Y–A	Country of Birth – *Pays de naissance*	File No. – *N° de référence*
Country of Citizenship – *Pays de citoyenneté*		Cross-reference No(s)– *N° de dossiers reliés*

Permanent or Temporary Address in the United States – *Adresse permanente ou temporaire aux États-Unis*

You have this day been examined in accordance with subsection 12(1) of the Immigration Act, (hereinafter called the Act). I am of the opinion that it is contrary to this Act and/or Immigration Regulations to grant you admission to Canada or otherwise let you come into Canada.

Vous avez aujourd'hui été interrogé(e) conformément au paragraphe 12(1) de la Loi sur l'immigration (ci-après appelée la Loi). J'estime que vous accorder l'admission ou la permission d'entrer au Canada contreviendrait à la Loi et (ou) au Règlement sur l'Immigration.

Because a Senior Immigration Officer is not available to receive my report, under subsection 20(2) of the Act, I direct that you return to the United States until a Senior Immigration Officer is available.

Comme aucun agent principal n'est disponible pour recevoir mon rapport, je vous ordonne, aux termes du paragraphe 20(2) de la Loi, de retourner aux États-Unis en attendant qu'un agent principal soit disponible.

A Senior Immigration Officer will be available at

Un agent principal sera disponible à

Location (Address of CIC) – *Endroit (Adresse du CIC)*	Date
	Time – *Heure*

at which time I will submit my report. If you desire to continue with your request for admission to Canada, please return on the date and time mentioned above.

Je présenterai alors mon rapport. Si vous désirez toujours solliciter l'admission au Canada, veuillez vous présenter à la date et à l'heure indiquées ci-dessus.

Signature of Immigration Officer – *Signature de l'agent d'immigration*

Date

Port of Entry – *Point d'entrée*

AFFIX PHOTOGRAPH

APPOSER LA PHOTOGRAPHIE

The information provided on this form is collected under the authority of the Immigration Act for the purpose of serving a DIRECTION TO RETURN TO THE UNITED STATES. This information will stored in Personal Information Bank number EIC PPU 270, ENFORCEMENT DATA SYSTEM, and you have the right of access to it and to its protection under the provisions of the Privacy Act.

Les renseignements fournis dans le présent formulaire sont recueillis en vertu de la Loi sur l'immigration aux fins de VOUS SIGNIFIER UNE ORDONNANCE DE RETOURNER AUX ÉTATS-UNIS. Les renseignements seront versés dans le fichier de renseignements personnels CEI PPU 270, SYSTÈME DE DONNÉES SUR L'EXÉCUTION DE LA LOI. Ils sont protégés et accessibles en vertu des dispositions de la Loi sur la protection des renseignements personnels.

CC - FILE ALL DETAILS OF THIS FORM SHOULD BE ENTERED IN FOSS AS A STATUS ENTRY.

C.C. - *DOSSIER* *TOUS LES RENSEIGNEMENTS FIGURANT SUR CE FORMULAIRE DOIVENT FAIRE L'OBJET D'UNE ENTRÉE DU STATUT AU SSOBL.*

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

IMM 1237 (12-92) B

Canada

APPENDIX R

SAMPLE OF IMM 1238 (12–92) B – DIRECTION TO RETURN TO THE UNITED STATES (UNDER SUBSECTION 23(5) OF THE *IMMIGRAITON ACT*)

Employment and Immigration Canada / Emploi et Immigration Canada

PROTECTED WHEN COMPLETED / *PROTÉGÉ UNE FOIS REMPLI* - A

DIRECTION TO RETURN TO THE UNITED STATES
(UNDER SUBSECTION 23(5) OF THE IMMIGRATION ACT)

ORDONNANCE DE RETOURNER AUX ÉTATS-UNIS
(AUX TERMES DU PARAGRAPHE 23(5) DE LA LOI SUR L'IMMIGRATION)

Surname – *Nom de famille*	Given Names – *Prénom(s)*	File No. – *N° de référence*	Client ID - *ID du client*

Date of Birth *Date de naissance* D–J M Y–A	Country of Birth – *Pays de naissance*	Country of Citizenship – *Pays de citoyenneté*

Permanent or Temporary Address in the United States – *Adresse permanente ou temporaire aux États-Unis*

I have received a report under subsection 20(1) of the Immigration Act (hereinafter called the Act) from an Immigration Officer. A copy of the report is attached.

J'ai reçu d'un agent d'immigration un rapport, dont vous trouverez un double ci-joint, établi en vertu du paragraphe 20(1) de la Loi sur l'immigration (ci-après appelée la Loi).

Pursuant to paragraph 23(4.2)(a) of the Act, I hereby cause an inquiry to be held concerning you as soon as reasonably practicable.

Je fais par les présentes procéder à une enquête à votre sujet, conformément à l'alinéa 23(4.2)a) de la Loi, dès que les circonstances le permettent.

Because an Adjudicator is not available to preside at the inquiry, pursuant to subsection 23(5) of the Act, I direct that you return to the United States until an Adjudicator is available.

Comme aucun arbitre n'est disponible pour présider l'enquête, conformément au paragraphe 23(5) de la Loi, je vous ordonne de retourner aux États-Unis en attendant qu'il soit possible d'en trouver un disponible.

An Adjudicator will be available at

Un arbitre sera disponible à

Location (address of CIC)- *Endroit (adresse du CIC)*	Date
	Time – *Heure*

at which time the Inquiry will commence. If you desire to continue with your request for admission to Canada, please return on the date and time mentioned above.

pour débuter l'enquête. Si vous désirez toujours solliciter l'admission au Canada, veuillez vous présenter de nouveau à la date et à l'heure indiquées ci-dessus.

The information provided on this form is collected under the authority of the Immigration Act for the purpose of serving a direction to return to the United States on you. This information will be stored in Personal Information Bank number EIC PPU 270, Enforcement Data System, and you have the right of access to it and to its protection under the provisions of the Privacy Act.

Les renseignements fournis dans le présent formulaire sont recueillis en vertu de la Loi sur l'immigration aux fins de vous signifier une ordonnance de retourner aux Etats-Unis. Les renseignements seront versés dans le fichier de renseignements personnels CEI PPU 270, Système de données sur l'exécution de la Loi. Ils sont protégés et accessibles en vertu des dispositions de la Loi sur la protection des renseignements personnels.

Affix Photograph

Apposer la photographie

Senior Immigration Officer – *Agent principal*	Date	Port of Entry – *Point d'entrée*

cc. file
cc. dossier

All details of this form should be entered in FOSS as a status entry.
Tous les renseignements figurant sur ce formulaire doivent faire l'objet d'une entrée du statut au SSOBL.

IMM 1238 (12/92) B

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

Canada

APPENDIX S
STATE VITAL STATISTICS OFFICES

		Telephone
ALABAMA	Director, Bureau of Vital Statistics State Department of Public Health State Office Building MONTGOMERY, Alabama 36130	(205) 832–3960/3100
ALASKA	State Registrar of Vital Statistics Department of Health & Social Services Pouch H–02G JUNEAU, Alaska 99811	(907) 465–3392
ARIZONA	Manager, Vital Records Section & Assistant State Registrar Arizona Department of Health Services P.O. Box 3887 PHOENIX, Arizona 85030	(602) 255–1084
ARKANSAS	Director, Vital Records Arkansas Department of Health 4815 West Markham Street LITTLE ROCK, Arkansas 72201	(501) 661–2371
CALIFORNIA	Chief, Vital Statistics Branch Department of Health Services 410 "N" Street SACRAMENTO, California 95814 SAN DIEGO, California	(916) 445–1719 (714) 236–2297/2670
COLORADO	State Registrar & Acting Director Division of Health Statistics & Vital Records Colorado Department of Health 4210 East 11th Avenue DENVER, Colorado 80220	(303) 320–5326
CONNECTICUT	Registrar, Vital Records State Department of Health 79 Elm Street HARTFORD, Connecticut 06115	(203) 566–3149
DELAWARE	Chief, Vital Statistics Division of Public Health Jesse S. Cooper Memorial Bldg. DOVER, Delaware 19901	(302) 736–4721
DISTRICT OF COLUMBIA	Chief, Vital Records Branch Research & Statistics Division 615 Pennsylvania Avenue N.W. WASHINGTON, D.C. 20004	(202) 727–5319
FLORIDA	State Registrar and Director Office of Vital Statistics P.O. Box 210 JACKSONVILLE, Florida 32231 WEST PALM BEACH, Fl.	(904) 354–3961 ext. 3202 (305) 837–3055

		Telephone
GEORGIA	Director Vital Records Service Department of Human Resources 47 Trinity Avenue S.W., Room 217H ATLANTA, Georgia 30334 Worth County, SYLVESTER, Ga.	(404) 656–4750 (912) 776–3371
HAWAII	State Registrar & Assistant Chief Research and Statistics Office Hawaii Department of Health P.O. Box 3378 HONOLULU, Hawaii 96801	(808) 548–5820
IDAHO	State Registrar and Chief Bureau of Vital Statistics Standards and Local Health Services Department of Health and Welfare State House BOISE, Idaho 33720	(208) 334–5084
ILLINOIS	Deputy State Registrar Illinois Department of Public Health 535 West Jefferson Street SPRINGFIELD, Illinois 62761	(217) 782–6553
INDIANA	State Registrar of Vital Records State Board of Health 1330 W. Michigan Street P.O. Box 1964 INDIANAPOLIS, Indiana 46206	(317) 633–0375
IOWA	Director, Vital Records Iowa Department of Health Robert Lucas Building DES MOINES, Iowa 50319	(515) 281–6581
KANSAS	Director, Bureau of Registration and Health Statistics and Health Statistics State Department of Health and Environment TOPEKA, Kansas 66620	(913) 862–9360 ext. 559
KENTUCKY	Registrar of Vital Statistics Department of Human Resources 275 East Main Street FRANKFORT, Kentucky 40601	(502) 564–4212
LOUISIANA	State Registrar Vital Records Section Department of Health and Human Resources P.O. Box 60630 NEW ORLEANS, Louisiana 70160	(504) 568–5175
MAINE	State Vital Statistics Registrar Bureau Health Planning/Development Department of Human Services State House, Mail Station #11 AUGUSTA, Maine 04333	(207) 289–3181

		Telephone
MARYLAND	Administrator Division of Vital Records Department of Health and Mental Hygiene 201 West Preston Street BALTIMORE, Maryland 21201	(301) 383–2840
MASSACHUSETTS	Acting Registrar Registry of Vital Records and Health Statistics Division of Health Statistics/Research 150 Tremont Street BOSTON, Massachusetts 02111	(617) 727–0110
MICHIGAN	State Registrar Michigan Department of Health P.O. Box 30035 LANSING, Michigan 48914 DETROIT, Michigan Macomb County	(517) 373–6604 (313) 876–4135 (313) 469–5205
MINNESOTA	State Registrar State Department of Health 717 Delaware Street S.E. MINNEAPOLIS, Minnesota 55440	(612) 623–5121
MISSISSIPPI	State Registrar and Director Public Health Statistics State Board of Health P.O. Box 1700 JACKSON, Mississippi 39205	(601) 354–6786
MISSOURI	Director, Bureau of Vital Records Missouri Division of Health P.O. Box 570 JEFFERSON CITY, Missouri 65102	(314) 751–3371
MONTANA	Chief, Bureau of Records and Statistics State Department of Health and Environmental Sciences HELENA, Montana 59620	(406) 449–2614
NEBRASKA	Director, Bureau of Vital Statistics State Department of Health P.O. Box 95007 LINCOLN, Nebraska 68509	(402) 471–2871
NEVADA	Administrator, Vital Statistics Division of Health Capitol Complex CARSON CITY, Nevada 89710	(702) 885–4480
NEW HAMPSHIRE	State Registrar and Chief Bureau of Vital Records and Health Statistics Hazen Drive, H & W Building CONCORD, New Hampshire 03301	(603) 271–4651

		Telephone
NEW JERSEY	Chief Vital Statistics and Registration Division of Administration Department of Health, CN 360 TRENTON, New Jersey 08625	(609) 292–4087
NEW MEXICO	State Registrar Health and Environment Department P.O. Box 968 SANTE FE, New Mexico 87503	(505) 827–2588
NEW YORK CITY	Director Bureau of Vital Records The City of New York Department of Health 125 Worth Street NEW YORK, New York 10013	(212) 566–8193
NEW YORK STATE	Director of Health Statistics New York State Department of Health Empire State Plaza, Tower Building ALBANY, New York 12237 BUFFALO, New York (Ms. Bookbinder)	(518) 474–8260 Peter Carucci (716) 855–4200
NORTH CAROLINA	State Registrar and Head Vital Records Branch Division of Health Services P.O. Box 2091 RALEIGH, North Carolina 27602	(919) 733–3000
NORTH DAKOTA	Director Office of Statistical Services Registrar for Vital Statistics North Dakota State Department of Health State Capitol, Judicial Wing BISMARCK, North Dakota 58505	(701) 224–4508
OHIO	Chief, Division of Vital Statistics Ohio Department of Health 65 South Front Street, Room G–20 COLUMBUS, Ohio 43215	(614) 466–2533
OKLAHOMA	Deputy Commissioner for Administration State Registrar of Vital Statistics State Department of Health 1000 Northeast 10th Street P.O. Box 53551 OKLAHOMA CITY, Oklahoma 73152	(405) 271–5615
OREGON	State Registrar State Health Division P.O. Box 231 PORTLAND, Oregon 97207	(503) 229–6558
RHODE ISLAND	Acting Chief Division of Vital Statistics Rhode Island Department of Health 101 Cannon Building75 Davis Street PROVIDENCE, Rhode Island 02908	(401) 277–2811

		Telephone
SOUTH CAROLINA	Director Public Health Statistics 2600 Bull Street COLUMBIA, South Carolina 29201	(803) 758–5504
UTAH	Director Bureau of Health Statistics Utah Department of Health P.O. Box 2500 SALT LAKE CITY, Utah 84110	(801) 533–6186
VERMONT	Director Public Health Statistics Vermont Department of Health 115 Colchester Avenue P.O. Box 70 BURLINGTON, Vermont 05402	(802) 862–5701 ext. 381
VIRGINIA	State Registrar and Chief Registration Services Division of Vital Records and Health Statistics P.O. Box 1000 RICHMOND, Virginia 23208	(804) 786–6221
WASHINGTON	Mrs. Marjorie Kegley Vital Records P.O. Box 9709, ET–11, Vital Records OLYMPIA, Washington 98504	(206) 586–0421
WEST VIRGINIA	State Registrar State Department of Health CHARLESTON, West Virginia 25305	(304) 348–8800
WISCONSIN	Director Bureau of Health Statistics and State Registrar Division of Health P.O. Box 309 MADISON, Wisconsin 53701	(608) 266–1334
WYOMING	Deputy State Registrar Vital Records Services Hathaway Building CHEYENNE, Wyoming 82002	(307) 777–7591
AMERICAN SAMOA	Registrar of Vital Statistics Vital Statistics Section LBJ Tropical Medical Center Pago Pago, American Samoa 96799	
GUAM	Territorial Registrar Office of Vital Statistics Government of Guam P.O. Box 2816 AGANA, Guam 96910	(734) 9901–10 ext. 368
NORTHERN MARIANA ISLANDS	Mr. Rokucho F. Billy Public Health Statistician Department of Health Services SAIPAN, Mariana Islands 96950	9370/9422/0355

		Telephone
PUERTO RICO	Director Division of Demographic Registry and Vital Statistics Puerto Rico Department of Health SAN JUAN, Puerto Rico 00908	(809) 722–5179
TRUST TERRITORY OF PACIFIC ISLANDS	Public Health Statistician Department of Health Services Trust Territory of Pacific Islands SAIPAN, Mariana Islands 96950	9370/9422/0355
VIRGIN ISLANDS	Director Research and Statistical Services Virgin Islands Department of Health Attention: Charlotte Amalie ST. THOMAS, Virgin Islands 00801 Department Registrar ST. CROIX, Virgin Islands	(809) 774–1734 (809) 773–4050

APPENDIX T
SAMPLE OF IMM 421 (03–90) B – ORDER FOR DETENTION

PROTECTED WHEN COMPLETED
PROTÉGÉ UNE FOIS REMPLI

Employment and Immigration Canada Emploi et Immigration Canada

ORDER FOR DETENTION ***ORDONNANCE DE DÉTENTION***

TO:
POUR:

In accordance with the provisions of
Conformément aux dispositions de _____ of the Immigration Act,
de la Loi sur l'immigration,

I hereby order that
j'ordonne, par les présentes, que _____ be detained
soit détenu(e)

forthwith for
immédiatement aux fins

- ☐ an examination
  d'examen
- ☐ an inquiry
  d'enquête
- ☐ deportation
  d'expulsion
- ☐ exclusion.
  d'exclusion.

Dated at _____ this _____ day of
Fait à _____ *ce* _____ *jour de* _____ 19 ____

_____
Authorized Officer and Title
Signature et titre de l'agent autorisé

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION
FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION

IMM 421 (03/90) B

Canada

Employment and Immigration Canada Emploi et Immigration Canada

PROTECTED WHEN COMPLETED - B
PROTÉGÉ UNE FOIS REMPLI

DOCUMENT ENVELOPE - *ENVELOPPE POUR DOCUMENTS*

DO NOT POST — *NE PAS POSTER*

TO / *À*

FLIGHT ATTENDANT/PURSER
AGENT DE BORD/COMMISSAIRE DE BORD

(Airline - *Ligne aérienne*)

Canada Immigration Centre - *Centre d'immigration Canada*	
Area Code / Ind. Rég.	*Telephone No. - Nº de téléphone*
Immigration Officer - *Agent d'immigration*	

IMPORTANT INFORMATION/INSTRUCTIONS FOR AIRLINE OFFICIALS - *IMPORTANT: RENSEIGNEMENTS ET INSTRUCTIONS POUR LES REPRÉSENTANTS DU TRANSPORTEUR AÉRIEN*

THIS ENVELOPE CONTAINS THE FOLLOWING DOCUMENTATION CONCERNING - *CETTE ENVELOPPE CONTIENT LES DOCUMENTS SUIVANTS CONCERNANT*

_____
(Full name of person concerned - *Nom complet de la personne concernée*)

WHOSE PHOTOGRAPH APPEARS HEREUNDER AND WHO IS UNDER REMOVAL ORDER FROM CANADA - *DONT LA PHOTO FIGURE CI-DESSOUS ET QUI A FAIT L'OBJET D'UNE ORDONNANCE DE RENVOI*

☐ Passport or travel document / *Passeport ou titre de voyage* ☐ Boarding pass / *Carte d'embarquement* ☐ Birth certificate / *Extrait de naissance* ☐ Airline ticket / *Billet d'avion* ☐ Baggage check / *Billet de bagages* ☐ _____

IF AN IMMIGRATION ESCORT IS ACCOMPANYING THIS INDIVIDUAL, THE ESCORT WILL CARRY THIS ENVELOPE AND ITS CONTENTS ON ALL CONNECTING FLIGHTS IN CANADA AND ON ALL INTERNATIONAL FLIGHTS TO THE FINAL DESTINATION, WHERE THE CONTENTS WILL BE TURNED OVER TO LOCAL AUTHORITIES AT THE PORT OF ARRIVAL.

IF THERE IS NO IMMIGRATION ESCORT ACCOMPANYING THIS PERSON, THE ENVELOPE AND ITS CONTENTS WILL BE RETAINED BY THE FLIGHT ATTENDANT OR PURSER AND TURNED OVER TO EITHER A CANADA IMMIGRATION OFFICER (IF THE FLIGHT TERMINATES IN CANADA) OR WHERE FEASIBLE, TO LOCAL GOVERNMENT AUTHORITIES AT FINAL DESTINATION OUTSIDE CANADA.

N.B. IF THERE IS A CHANGE OF FLIGHTS SOMEWHERE BETWEEN THE CANADIAN PORT OF DEPARTURE AND FINAL DESTINATION, THIS ENVELOPE AND ITS CONTENTS MUST BE TRANSFERRED TO THE FLIGHT ATTENDANT/PURSER CONCERNED. DO NOT GIVE THIS ENVELOPE AND ITS CONTENTS TO THE PERSON CONCERNED AT ANY TIME PRIOR TO ARRIVAL AT FINAL DESTINATION.

SI UN AGENT DE L'IMMIGRATION ESCORTE CETTE PERSONNE, IL DOIT CONSERVER CETTE ENVELOPPE ET SON CONTENU DURANT TOUS LES VOLS DE CORRESPONDANCE EFFECTUÉS AU CANADA AINSI QUE DURANT TOUS LES VOLS INTERNATIONAUX JUSQU'À L'ARRIVÉE À DESTINATION OÙ IL EN REMETTRA LE CONTENU AUX AUTORITÉS LOCALES.

SI AUCUN AGENT DE L'IMMIGRATION N'ESCORTE LA PERSONNE CONCERNÉE, L'ENVELOPPE (ET SON CONTENU) DOIT ÊTRE CONSERVÉE PAR L'AGENT DE BORD OU LE COMMISSAIRE DE BORD QUI LA REMETTRA ENSUITE À UN AGENT D'IMMIGRATION DU CANADA (SI LA DESTINATION DU VOL EST AU CANADA) OU AUX AUTORITÉS LOCALES LORSQUE LA DESTINATION EST À L'ÉTRANGER.

NOTA: S'IL Y A CHANGEMENT DE VOL ENTRE LE POINT DE DÉPART AU CANADA ET LA DESTINATION, L'ENVELOPPE (ET SON CONTENU) DOIT ÊTRE REMISE À L'AGENT DE BORD OU AU COMMISSAIRE DE BORD CONCERNÉ. CETTE ENVELOPPE (ET SON CONTENU) NE DOIT JAMAIS ÊTRE REMISE À LA PERSONNE CONCERNÉE DURANT LE TRAJET.

IN-CANADA CONNECTING FLIGHT INFORMATION	*RENSEIGNEMENTS SUR UN VOL DE CORRESPONDANCE AU CANADA*
☐ NOT APPLICABLE, OR THE PERSON CONCERNED IS TRAVELLING ☐ WITH ☐ WITHOUT AN IMMIGRATION ESCORT OFFICER	☐ *SANS OBJET; OU UN AGENT D'ESCORTE DE L'IMMIGRATION* ☐ *ACCOMPAGNERA* ☐ *N'ACCOMPAGNERA PAS LA PERSONNE CONCERNÉE*
ON (Flight No.) _____ OCCUPYING (Seat No.) _____	*QUI OCCUPERA LE SIÈGE Nº* _____ *SUR LE VOL Nº* _____
DEPARTING (Name of Airport) _____	*PARTANT DE L'AÉROPORT DE* _____
AT/ON (Time and Date) _____	*À* _____ *H* _____ *LE* _____ *POUR ARRIVER À*
ARRIVING AT (Name of Airport) _____	*L'AÉROPORT DE* _____
AT/ON (Time and Date) _____	*À* _____ *H* _____ *LE* _____
INTERNATIONAL FLIGHT INFORMATION	***RENSEIGNEMENTS SUR UN VOL INTERNATIONAL***
☐ NOT APPLICABLE; OR THE PERSON CONCERNED IS TRAVELLING ☐ WITH ☐ WITHOUT AN IMMIGRATION ESCORT OFFICER	☐ *SANS OBJET; OU UN AGENT D'ESCORTE DE L'IMMIGRATION* ☐ *ACCOMPAGNERA* ☐ *N'ACCOMPAGNERA PAS LA PERSONNE CONCERNÉE*
ON (Flight No.) _____ OCCUPYING (Seat No.) _____	*QUI OCCUPERA LE SIÈGE Nº* _____ *SUR LE VOL Nº* _____
DEPARTING (Name of Airport) _____	*PARTANT DE L'AÉROPORT DE* _____
AT/ON (Time and Date) _____	*À* _____ *H* _____ *LE* _____ *POUR ARRIVER À*
ARRIVING AT (Name of Airport) _____	*L'AÉROPORT DE* _____
AT/ON (Time and Date) _____	*À* _____ *H* _____ *LE* _____

The above photograph must match exactly the photograph which appears on the IMM 1253 "Notice of Removal & Profile" which was presented to airline officials on _____
DATE

La photo ci-dessus doit être identique à celle se trouvant sur l'IMM 1253 "Avis de renvoi et renseignements" qui a été transmis aux représentants du transporteur aérien le _____
DATE

COMPLETE NAME(S) OF IMMIGRATION ESCORT OFFICER(S) (where applicable) - *NOMS COMPLETS DU OU DES AGENTS D'ESCORTE DE L'IMMIGRATION (s'il y a lieu)*

_____ _____
_____ _____
_____ _____

IMM 1226 (2-92) B

APPENDIX V

TRANSPORT CANADA NOTAM: RECOMMENDED PROCEDURES FOR THE CARRIAGE OF FIREARMS AND PASSENGERS UNDER ESCORT ABOARD CANADIAN REGISTERED AIRCRAFT

A. RECOMMENDED PROCEDURES FOR THE CARRIAGE OF FIREARMS ABOARD CANADIAN REGISTERED AIRCRAFT

1. PROCEDURES FOR LAW ENFORCEMENT AUTHORITIES

1.1 Each law enforcement authority should establish procedures to ensure the following:

a) The carriage of firearms aboard aircraft by a peace officer under its jurisdiction is limited to those situations which require that officer to be armed in flight to ensure the safe completion of his mission.

b) Each peace officer it authorizes to carry a firearm aboard an aircraft is fully aware of:

i) the procedures adopted by the air carrier, whose services he will be using, governing the carriage of firearms aboard aircraft.

ii) the potential danger to the safe operation of the aircraft should officers take any action during a hijacking without direction of the pilot–in–command.

2. PROCEDURES FOR ARMED PEACE OFFICERS

2.1 A peace officer authorized to carry a firearm aboard a particular flight shall:

a) Notify a responsible air carrier employee, preferably a supervisor at the airport, at least one hour before flight time or, in an emergency, as soon as practicable prior to scheduled departure of the flight. The notification may be made in person or by telephone.

b) Present official identification to a responsible air carrier employee, preferably a supervisor at the airport, by displaying credentials that include a clear, full–face picture and the individual's signature. A badge, shield or similar device may not be used as a sole means of identification.

c) Complete the Notice to Armed Individuals and Escort Officers Form used by the air carrier to notify the pilot–in–command of the presence on board the aircraft of an armed peace officer and any passenger under escort.

d) When in civilian attire, carry the firearm unloaded and securely concealed on the person or otherwise.

e) When in uniform, carry the firearm unloaded on the individual's person in a holster designed for the carriage of the firearm.

f) Not consume any alcoholic beverage when having access to a firearm.

3. PROCEDURES FOR AIR CARRIERS

3.1 The air carrier shall establish procedures to ensure that:

a) Prior to boarding, the armed individual is made aware of its procedures for carrying firearms aboard its aircraft. This information shall be provided on the printed Notice to Armed Individuals and Escort Officers Form.

b) The identity of the armed peace officer is known to the pilot–in–command and other peace officers aboard unless confidentiality is requested by an undercover officer, in which event the latter will be advised of the presence of the other armed peace officers without the individual's presence or identity being disclosed to anyone.

c) No alcoholic beverage is served to a peace officer having access to a firearm.

d) An incident of non compliance by an armed peace officer is reported in writing to the appropriate authority concerned.

B. RECOMMENDED PROCEDURES FOR THE CARRIAGE OF PASSENGERS UNDER ESCORT ABOARD CANADIAN REGISTERED AIRCRAFT

1. INTRODUCTION

1.1 Definitions:

"Escorting Officer" means the person having custody or control of another passenger when travelling aboard aircraft.

1.2 Policy:

The air carrier reserves the sole right to refuse or accept passage of passenger(s) under escort. The air carrier will accept passenger(s) under escort, providing no unusual risk or inconvenience to other passengers will be involved and, further, that the following conditions are met.

2. CONDITIONS FOR CARRIAGE OF PASSENGER(S) UNDER ESCORT BEFORE BOARDING AIRCRAFT

2.1 Notice to Responsible Representative of Air Carrier

Prior to presenting a passenger or passengers under escort for carriage aboard an aircraft, the Escorting Officer(s) or Agency will notify a responsible representative of the air carrier, i.e., the Supervisor in charge of the passenger counter, or the Supervisor in charge of passenger service in the case of larger stations, or the Station Manager, or the acting Station Manager in the case of smaller stations, of the following:

a) The identity of the passenger under escort to be carried.

b) The flight on which it is proposed to carry the escorted passenger.

c) The reasons for escort.

2.2 Assessment as to Risk to Security

A completed Notice to Armed Individuals and Escort Officers Form must be presented to a responsible air carrier employee, preferably a Supervisor at the airport, at least one hour prior to flight departure and include an assessment of the passenger(s) under escort as to the risk of security.

2.3 Interline Transportation

If interline transportation is involved, concurrence must be obtained in advance from the other air carriers.

2.4 Required Number of Escorts, by Security Rating

A passenger under escort having a maximum security rating requires a minimum of two escorts. Only one maximum–security–rated passenger under escort is to be carried per flight. Passengers under escort having a medium security rating may be carried with one escort for each passenger under escort. Passengers under escort having a minimum security rating may be carried with one escort for every two passengers with escort (or more with prior agreement of the air carrier).

2.5 Right to Limit Number of Passengers under Escort

Air carriers will reserve the right to limit the maximum number of passengers under escort having a medium or minimum security rating to be carried on any flight considering the size of the aircraft and the level of danger involved.

2.6 Search of Passengers under Escort

The Escorting Officer ensures the passenger under escort has been searched and does not carry contraband, weapons, matches, or other potentially dangerous items aboard an air carrier aircraft.

2.7 Incapacitating Gas–Generating Devices

The Escorting Officer will not carry mace, tear gas, or similar incapacitating gas–generating devices aboard the aircraft.

2.8 Restraining Devices

The Escorting Officer will be equipped with adequate restraining devices to be used in the event the passenger under escort becomes unruly.

2.9 Hijacking or Other Illegal Acts

The Escorting Officer has been apprised by his/her superiors that he is to institute no action in the event of a hijacking or other illegal act, unless requested to do so by the pilot–in–command or his designate.

2.10 Pre–Boarding

The Escorting Officer escorting a passenger under escort boards in advance of other passengers as "pre–board," whenever possible.

2.11 Possession of Documentation

The Escorting Officer will keep in his possession all documentation pertaining to the passenger under escort.

2.12 Potential Weapons

The Escorting Officer makes a search for potential weapons in the seating area allocated for the passenger under escort.

3. CONDITIONS FOR CARRIAGE OF PASSENGER(S) UNDER ESCORT AFTER BOARDING AIRCRAFT

3.1 Seating priorities for the Escorting Officer and passenger under escort are to be as follows:

a) Whenever possible, the passenger under escort and the Escorting Officer will be assigned to the rear seats of the aircraft.

b) The passenger under escort shall not be seated adjacent to any normal or emergency exit.

c) Depending on the seating arrangements, the passenger under escort will be assigned a window seat and the Escorting Officer next to him.

d) Whenever possible, at least one Escorting Officer will be seated between the passenger under escort and the aisle unless aircraft seating configuration prevents this arrangement.

3.2 The Escorting Officer:

a) Will not normally shackle a passenger under escort to any part of the aircraft, including seats, tables, etc.

b) Will not permit the passenger under escort to leave his seat without being escorted by the Escorting Officer.

c) Will decide what utensils will be supplied with the meal served to the passenger under escort.

d) Will not consume any intoxicating liquor nor allow any to be served to the passenger under escort.

4. PROCEDURES

Deplaning of passenger under escort: Whenever possible, the Escorting Officer(s) and the passenger under escort will deplane after the terminating passengers have left the aircraft.

Barry D. Blair
Assistant Administrator, Air Navigation

APPENDIX W
REGIONAL DIRECTORS/MANAGERS, INVESTIGATION AND CONTROL OFFICES

Walter Andrews
Regional Manager, I&C
Employment and Immigration Canada
689 Topsail Road
P.O. Box 12051
ST. JOHN'S, Newfoundland
A1B 3Z4
Telephone: 1–709–772–0457
Fax: 1–709–772–5329 or 1–709–772–0816

Ken MacDonald
A/Regional Chief, I&C
Employment and Immigration Canada
99 Wyse Road
P.O. Box 1350
DARTMOUTH, Nova Scotia
B2Y 4B9
Telephone: 1–902–426–2476
Fax: 1–902–426–8724

Francine Desjardins
Directrice régionale, E&C
Emploi et Immigration Canada
1441, rue St. Urbain
Case postale 7500, Succursale A
MONTRÉAL (Québec)
H3C 3L4
Téléphone: 1–514–283–2133
Fax: 1–514–496–6794

Doug McCombs
Regional Manager, I&C
Employment and Immigration Canada
Room 500, Paris Building
259 Portage Avenue
WINNIPEG, Manitoba
R3B 3L4
Telephone: 1–204–983–6241
Fax: 1–204–983–4208

Barry Rhein
Regional Chief, I&C
Employment and Immigration Canada
Room 1440
9700 Jasper Avenue
EDMONTON, Alberta
T5J 4C1
Telephone: 1–403–495–5714
Fax: 1–403–495–6597

Jerry Blanchard
A/Regional Manager, I&C
Employment and Immigration Canada
85 Fitzroy Street
P.O. Box 8000
CHARLOTTETWON, Prince Edward Island
C1A 8K1
Telephone: 1–902–566–7670
Fax: 1–902–566–7699

Dorothée Arsenault
Chief, Insurance and Control
Employment and Immigration Canada
1081 Main Street
P.O. Box 6044
MONCTON, New Brunswick
E1C 9G8
Telephone: 1–506–851–6822
Fax: 1–506–851–3056

Ken Byrne
Regional Director, I&C
Employment and Immigration Canada
494 Dundas St. East
BELLEVILLE, Ontario
K8N 5C1
Telephone: 1–613–969–3424
Fax: 1–613–969–3703

Dick Clarke
Regional Manager, I&C
Employment and Immigration Canada
Financial Building
800 – 2101 Scarth Street
REGINA, Saskatchewan
S4P 2H9
Telephone: 1–306–780–6161
Fax: 1–306–780–6483

Allan Morris
Regional Manager, I&C
Employment and Immigration Canada
23rd floor, Royal Centre
1055 West Georgia Street
P.O. Box 11145
VANCOUVER, British Columbia
V6E 2P8
Telephone: 1–604–666–6536
Fax: 1–604–666–6308

IMMIGRATION

Canada

Chapter EC 7
CPIC Access and Warrant Management



Citizenship and Immigration Canada
Citoyenneté et Immigration Canada

CPIC Access and Warrant Management

Abbreviations and Short Forms	
CIC	Citizenship and Immigration Canada
CPIC	Canadian Police Information Centre
FOSS	Field Operations Support System
FOSS–FDE	Field Operations Support System – Full Document Entry
OMS	Offender Management System
I & P	Immigration and Passport Section of the RCMP
ISTB	Information Systems and Technologies Branch
INTERPOL	International Police Services
IWRC	Immigration Warrant Response Centre
NCIC	National Crime Information Centre (U.S.A.)
NHQ	National Headquarters, Ottawa
OIC	Officer in Charge
PRI	Personal Record Identifier
PSRA	Personnel Screening Request and Authorization
RCMP	Royal Canadian Mounted Police
RHQ	Regional Headquarters
TRA	Threat Risk Assessment

1. INTRODUCTION **1**
1.1 CPIC – a collective responsibility 1
1.2 The CPIC – FOSS interface 1
1.3 The Immigration Warrant Response Centre (IWRC) 1
1.4 What is this chapter about? 2
1.5 Policy intent 2

2. PERSONNEL SECURITY **3**
2.1 Requirements of CPIC Services 3
2.1.1 Acknowledgement of restrictions respecting the handling of CPIC material, records and information 3
2.1.2 Completing the CPIC Waiver 3
2.2 Conditions for access 3
2.2.1 Exceptions 4
2.3 Security clearance process 4
2.3.1 User codes and passwords 4
2.3.2 Preparation for accessing CPIC 4
2.4 CPIC access inventory 5
2.4.1 Local and/or regional offices 5
2.5 Changes in personnel 5
2.5.1 Change of location and Responsibility Code 5
2.5.2 Change in employee's personal information 5

3. CPIC WARRANT MANAGEMENT **6**
3.1 The role of the IWRC 6
3.2 Entering warrants on FOSS 6
3.2.1 Data integrity 6
3.2.2 Monitoring 6
3.3 Warrants to be entered onto CPIC 6
3.3.1 Maintenance of Immigration Warrant records on CPIC 7
3.4 Transferring warrants onto the CPIC system – FOSS warrant entry screen 7
3.4.1 CIC service standards 7
3.4.2 Mandatory documentation 7
3.4.3 Sending warrant packages to the IWRC 7
3.4.4 Warrants received at the IWRC 8
3.4.5 Corroborating warrants on CPIC via FOSS 8
3.5 Executed warrants 8
3.5.1 Duty Officer and CIC office responsibilities 9
3.6 Amending a warrant 9
3.7 Cancelling a warrant 9
3.8 CAUTION – merging clients IDs where there exists an active warrant 10
3.9 Validating and purging of warrants 10
3.10 A105 cases 10
3.10.1 Exceptions 10
3.11 Units of business 10
3.11.1 Exceptions 10
3.12 Questions and queries 10

4. PRIVACY, ACCESS TO, AND DISCLOSURE OF CPIC INFORMATION 11
4.1 Privacy 11
4.2 Collection and use of CPIC information 11
4.2.1 Information collection from CPIC 11
4.2.2 Recording on FOSS information collected from CPIC 11
4.2.3 Collecting CPIC information on CIC files 12
4.2.4 Unauthorized collection of CPIC information 12
4.3 Disclosure 12
4.3.1 Classified or exempt data banks 12
4.3.2 Requests for disclosure of CPIC information 12
4.3.3 Improper or unauthorized use or disclosure of CPIC information 13
4.3.4 Court–ordered disclosure 14
4.3.5 Immigration inquiries 14
4.4 Retention of CPIC information 14
4.4.1 Monitoring CPIC queries 14
4.4.2 Disposing of Protected "B" information 14

5. AUDIT OF CPIC EQUIPMENT, SECURITY AND USE 15
5.1 Auditing the use of the CPIC system 15
5.2 Management responsibilities 15
5.3 Audit review channels 16

6. PHYSICAL SECURITY OF OFFICES WITH ACCESS TO CPIC 17
6.1 Physical security 17

7. PROVIDING FEEDBACK ON THIS MANUAL CHAPTER 18

APPENDIX A
ACKNOWLEDGEMENT OF RESTRICTIONS RESPECTING THE HANDLING OF CPIC MATERIALS, RECORDS AND INFORMATION (CPIC WAIVER) 19

APPENDIX B
DOCUMENT CHECKLIST FOR SUBMISSION TO IWRC 21

APPENDIX C
CPIC WARRANT PROCESS FLOWCHART 23

APPENDIX D
RCMP FIELD OPERATIONS/CPIC SERVICES CONTACT LISTS 25

APPENDIX E
SAMPLE OF FORM TBS/SCT 330–23 – PERSONNEL SCREENING REQUEST AND AUTHORIZATION 27

APPENDIX F
SAMPLE OF FORM C-216C – RCMP IDENTIFICATION FINGERPRINT SHEET . 29

APPENDIX G
SITE SECURITY DOCUMENT 31

APPENDIX H
MEMORANDUM OF UNDERSTANDING (MOU) WITH CPIC SERVICES 39

1. AUTHORITY 39
2. PURPOSE AND OBJECTIVE 39
3. ORGANIZATIONAL OBLIGATIONS 39
4. LIAISON CHANNELS 41
5. MODIFICATION OR CANCELLATION 41
6. LEGAL EFFECT 41
7. REVIEW 41

APPENDIX I
WARRANT CONFIRMATION DUTY OFFICER 43

APPENDIX J
DETENTION FACILITIES 45

APPENDIX K
SECTION 3 OF THE PRIVACY ACT 47

1. INTRODUCTION

1.1 CPIC – a collective responsibility

CPIC is a national repository of law enforcement operational information that is a vital shared resource within Canada. The quality and effectiveness of this support system depends on correct user procedures. You, as an individual terminal operator, are the most important link in the entire network with regard to accuracy and relevance of data. This has a heightened importance with the direct entry of Immigration Warrant data on FOSS which can be transferred to CPIC. The safety of your fellow enforcement officers is best protected by accurate, timely and reliable information.

CIC's CPIC access is a privilege and a very substantial investment. This investment greatly improves CIC's enforcement efficiency and enhances officers' safety. Access to the CPIC system is granted by the CPIC Advisory Committee and can be revoked. Please read this chapter and all its references closely to ensure that this access is not put at risk.

1.2 The CPIC – FOSS interface

CIC, in conjunction with CPIC Services, RCMP, has developed an interface between the CPIC and FOSS systems. This computer link allows approved CIC personnel to query the CPIC system at all airports, land–border crossings and all CIC offices in Canada. The interface also allows the IWRC to electronically transfer Immigration Warrant information to the CPIC system once the mandatory documentation is received. The CPIC–FOSS link not only enhances officers' safety and security, it also improves the efficiency of CIC's warrant management process.

1.3 The Immigration Warrant Response Centre (IWRC)

1995 marks the opening of CIC's Immigration Warrant Response Centre (IWRC), located in Ottawa. This office is responsible for:

- transferring Immigration Warrants from FOSS to CPIC;
- maintaining all original Immigration Warrants entered onto the CPIC system;
- confirming with police and law enforcement agencies, on an "on–going" basis, the validity of these warrants;
- supporting the law enforcement community in the execution of Immigration Warrants and dispatching appropriate CIC personnel to respond;
- ensuring the Department's compliance with all CPIC policies and procedures through the conduct of audits; and,
- monitoring Immigration Warrant files (see section 5. on Audits).

The IWRC operates on a 24 hour/7 day per week basis. It is available to CIC and the law enforcement community via a 1–800 number and CPIC address. The 1–800 number and CPIC address are identified when an

Immigration Warrant is queried on the CPIC system. The 1–800 number is not a published telephone number and is only to be used for the confirmation of Immigration Warrants. All general enquiries are to be made through the IWRC's general telephone number.

The address and general telephone number can be found in section 3. of this chapter.

1.4 What is this chapter about?

This manual chapter is designed to provide information to CIC personnel concerning the Department's direct on–line access and use of the CPIC system. As well, this chapter details the warrant management process.

This chapter must be read in conjunction with the CPIC Reference Manuals, provided by CPIC Services, RCMP. **It is critical that all users of the CPIC system are aware of and follow the practices and policies as outlined in these manuals.**

1.5 Policy intent

This manual chapter is designed to:

- ensure that CIC's responsibilities with respect to its access and use of the CPIC system are explained;
- ensure that CIC's CPIC warrant management process is clearly outlined and understood; and,
- ensure that consequences of non–adherence to the policies detailed in this chapter are clearly known.

2. PERSONNEL SECURITY

This section explains the requirements for obtaining access to CPIC, as well as its process. It also provides direction in the case where an employee, with access to CPIC, has a change of personal information or circumstance.

2.1 Requirements of CPIC Services

CPIC policy requires that all personnel accessing the CPIC system directly on–line **MUST**, without exception, have a minimum security clearance level of Enhanced Reliability, **AND** a criminal record check conducted by the RCMP through the submission of fingerprints.

2.1.1 Acknowledgement of restrictions respecting the handling of CPIC material, records and information

No direct on–line access to the CPIC system will be granted before the completion and signing of CIC's CPIC Waiver. The CPIC Waiver is entitled "Acknowledgement of Restrictions Respecting the Handling of CPIC Material, Records and Information". A copy of the CPIC Waiver can be found in APPENDIX A.

The CPIC Waiver ensures that CIC employees fully understand the responsibilities associated with access to CPIC. All CIC personnel with direct on–line access to the CPIC system must fully understand that they are **PERSONALLY** accountable to CIC and CPIC Services for all their CPIC transactions, as well as to how they use the information collected from the CPIC system.

2.1.2 Completing the CPIC Waiver

See section 2.3.2: "Preparation for Accessing CPIC". All CIC personnel approved for direct on–line access to CPIC receive training on how to use the CPIC system. The CPIC Waiver is signed, by the employee, immediately upon completion of training.

Also, when a CIC employee's direct access to CPIC is terminated, for any reason, including:

- termination of employment with CIC;
- retirement;
- transfer to a position which does not require direct CPIC access; and,
- extended leave of absence beyond six months,

this employee must complete the "Termination of Access" portion of the waiver. Employees may wish to retain a completed and signed copy of the waiver for their personal records.

2.2 Conditions for access

Each local office manager is to determine and approve which personnel, within their managerial boundaries, require access to the CPIC system and managers must also ensure that all personnel security clearance requirements are met. Specifically, direct on–line access to the CPIC

system should be based on an employee's need to access information for operational needs. Moreover, the frequency of the employee's access should be constant and not occasional.

2.2.1 Exceptions

Due to the time, cost, and training involved in granting direct on–line access to CPIC, managers are asked not to request such access for summer and contract staff. Exceptions to this rule will be reviewed with a view to the absolute necessity for direct CPIC access for operational purposes. Managers are to write a rationale for such access and attach it to the security clearance documentation.

2.3 Security clearance process

The process for completing security clearances is as follows:

- PSRA and fingerprint forms are to be completed by all staff requiring access to CPIC (forms TBS/SCT 330–23 and RCMP C–216C, respectively – see APPENDIX E and APPENDIX F for samples);
- PSRA forms are to be marked **"For CPIC Clearance"**;
- forms are to be forwarded to the Regional Security Coordinator for onward transmission to the Security and Investigations Division, Corporate Management Sector, National Headquarters; and,
- the Regional Security Coordinator will be notified when clearance is completed.

For easy reference, the full address of the Security and Investigations Division at National Headquarters is:

The Security and Investigations Division
Corporate Management Sector
Citizenship and Immigration Canada
Room D925, 9th Floor
300 Slater Street
Ottawa, Ontario
K1A 1L1

2.3.1 User codes and passwords

The Security and Investigations Division notifies the Information Systems and Technologies Branch (ISTB) of the approved clearance. ISTB issues a CPIC user code and advises the appropriate FOSS Security Coordinator.

2.3.2 Preparation for accessing CPIC

When a user code and password is received by a FOSS Security Coordinator, the following steps are taken:

- the user code is issued to the new CPIC user, only at the time of training;
- training is arranged and is provided by experienced CPIC users. This training may be provided internally, or arrangements may be made with CPIC Services or with local police;
- this manual chapter and the CPIC Reference Manuals must be provided to the new CPIC user and are to be read in their entirety;
- a signed copy of the CPIC Waiver is obtained from the new CPIC user (reference APPENDIX A); and,

- the signed CPIC Waiver is forwarded to the Regional Security Coordinator for onward transmission to the Security and Investigations Division at National Headquarters (address found in section 2.3 of this chapter).

2.4 CPIC access inventory

The Security and Investigations Division of the Corporate Management Sector at National Headquarters maintains a personnel inventory of all employees requesting and granted direct access to CPIC. These files contain all documentation pertaining to the processing of employee security clearances. At minimum, these files contain the following:

- the PSRA;
- a copy of fingerprints; and,
- the signed CPIC Waiver.

2.4.1 Local and/or regional offices

Managers may wish to retain the following information for their records:

- the name and PRI number of the employee; and,
- the date CPIC security clearance is granted as well as its expiry date.

2.5 Changes in personnel

CIC personnel are granted direct on–line access to the CPIC system because of a genuine need based on operational requirements. When an employee no longer requires direct CPIC access for reasons such as:

- a change of duties or position;
- the termination of employment; and/or,
- a change of employment,

the manager must inform the Regional Security Coordinator and ISTB (FOSS Security Coordinator). As well, the Regional Security Coordinator must inform the Security and Investigations Division at National Headquarters.

2.5.1 Change of location and Responsibility Code

When employees change locations of work (new Responsibility Centre) and still have a genuine operational need for direct CPIC access, the Regional Security Coordinator, the Security and Investigations Division at National Headquarters, and ISTB (FOSS Security Coordinator) at National Headquarters **MUST** be informed by the manager of the change.

2.5.2 Change in employee's personal information

If an employee with approved direct on–line access to CPIC has a change of personal information such as a change of name, this employee's manager/director must notify the Regional Security Coordinator who will inform ISTB as well as the Security and Investigations Division, National Headquarters.

3. CPIC WARRANT MANAGEMENT

The warrant management process outlines the procedures that must be followed to enter an Immigration Warrant onto the CPIC system. As well, courses of action for changing or removing information concerning warrants on CPIC are explained.

3.1 The role of the IWRC

Immigration Warrants are entered and maintained on CPIC by CIC. Local CICs determine which warrants are to be entered onto CPIC (see section 3.3), but only the IWRC can electronically transfer warrants to the CPIC system.

The IWRC also maintains these warrants on the CPIC system and houses the originals in the IWRC registry.

3.2 Entering warrants on FOSS

ALL Immigration Warrants must be entered onto FOSS immediately upon issuance.

3.2.1 Data integrity

It is absolutely essential that all data being entered onto FOSS is accurate, up–to–date, and credible. Since this data will be transferred to CPIC to inform law enforcement personnel, the consequences of it being inaccurate or out–of–date can:

- affect the safety of law enforcement officers;
- jeopardize the safety of the Canadian public;
- result in civil litigation; and,
- adversely effect the credibility of the Department and its personnel with our law enforcement partners and the Canadian public.

Therefore, it is recommended that related CIC files be reviewed before entering Immigration Warrant data on FOSS. Furthermore, data entered on the FOSS screen should be proofread.

IMPORTANT: Warrants will be transferred to CPIC only if the subject is identified in the sex data fields on FOSS as male or female. An entry of "UNKNOWN" in this field is not acceptable in warrant cases.

3.2.2 Monitoring

To ensure the integrity of the data being transferred to CPIC, the IWRC monitors the information contained in Immigration Warrant records being transferred to the CPIC system.

3.3 Warrants to be entered onto CPIC

The following Immigration Warrant cases are to be entered onto the CPIC system:

- cases involving known criminal history;
- warrants issued for removal from Canada; and,
- cases in which there are reasonable and probable grounds to believe that the subject poses a threat to the safety and well–being of the Canadian public, including that of law enforcement officers.

Other Immigration Warrants may be entered onto the CPIC system at the discretion of the manager/director of the CIC office.

3.3.1 Maintenance of Immigration Warrant records on CPIC

All original Immigration Warrants and the associated mandatory documentation are maintained by the IWRC in its registry. Immigration Warrants that are executed, cancelled or deleted on FOSS are automatically electronically removed from the CPIC system. IWRC then forwards its file to the executing, cancelling or deleting office. This procedure does not apply to amendments made to the FOSS warrant screen. It is important to read the amendment portion of this section (see section 3.6).

3.4 Transferring warrants onto the CPIC system – FOSS warrant entry screen

If a warrant is to be transferred to CPIC, the "WRC Y/N" field of the FOSS screen must be filled with a "Y". This informs the IWRC that the warrant is destined to CPIC and enables the transfer to take place once the mandatory documentation is received and verified at the IWRC. If "N" is selected, the warrant is not transferred to CPIC. **CAUTION:** When not filled, the WRC field defaults to "Y".

Since the most recent client address is included in the transfer of data to CPIC, it must be verified before entering "Y" in the WRC field.

If an existing warrant is to be transferred to CPIC, the "N" in the WRC field must be changed to "Y" to enable the transfer to take place. This can be done via the FOSS Maintenance Function.

3.4.1 CIC service standards

The following service standards **MUST** be met by CICs:

- all Immigration Warrants **MUST** be entered onto FOSS immediately upon issuance;
- the FOSS warrant screen **MUST** indicate if the warrant is to be transferred to CPIC ("WRC Y/N"); and,
- if the WRC field is filled with a "Y", the original Immigration Warrant and accompanying mandatory documentation must reach the IWRC **WITHIN 48 HOURS** of the warrant being issued.

3.4.2 Mandatory documentation

In addition to the original Immigration Warrant, the mandatory documentation is the essential data required by the IWRC before a warrant can be transferred to CPIC. A listing of this documentation can be found in APPENDIX B. Too much information in a warrant package is better than not enough, and accuracy is **PARAMOUNT**.

3.4.3 Sending warrant packages to the IWRC

All warrant packages (consisting of the original warrant, as well as mandatory and additional documentation) must be forwarded to the IWRC via a secure, timely and reliable mail service. Examples of such services include Purolator, Federal Express, Priority Post, Loomis Courier Service and United Parcel Service (UPS). Please note that the majority of

warrant package information is designated as Protected "B". Some information may also be classified as Secret. This information must be appropriately safeguarded.

Warrant packages are to be mailed to:

IWRC
Citizenship and Immigration Canada
300 Slater Street,
9th Floor, Section A,
Ottawa, Ontario
K1A 1L1

The external envelope should be devoid of all markings other than the IWRC address and must bear a return address and a telephone number. Government standards for the shipping of classified information must be followed.

Courier/mail services must provide proof of mailing and, on request, record of transit/delivery for any items delivered via their service. Since the warrant package contains original documents which may not be replaced, proof of mailing and records of transit/delivery should be requested for all items. Further, it is imperative to trace documentation lost on route to the IWRC **IMMEDIATELY**.

3.4.4 Warrants received at the IWRC

Upon receiving the warrant package, the IWRC:

- verifies that the warrant package information is complete and includes all mandatory documentation;
- queries FOSS, CPIC and OMS to ensure the data is complete and accurate; and,
- electronically transfers the warrant information to CPIC.

Please note that Immigration Warrant information cannot be transferred to CPIC if:

- the original warrant is not received by the IWRC;
- other mandatory documentation is missing;
- more information is required; and/or,
- there are discrepancies in FOSS, OMS, CPIC or other data concerning the individual.

3.4.5 Corroborating warrants on CPIC via FOSS

Warrants transferred to the CPIC system by the IWRC will display, in reverse video, an "ON CPIC" message above the option line of the FOSS warrant screen.

3.5 Executed warrants

There are two means by which the IWRC is informed of the execution of an Immigration Warrant on the CPIC system. They are:

- an update of FOSS by the CIC office via the FOSS FDE Module

  When this occurs, the IWRC is automatically notified and the warrant record is immediately removed from CPIC. The IWRC will return the original warrant package to the executing CIC office. A stamped and dated Document Transit and Receipt form to indicate the warrant has been executed will accompany the package; and,

- contact by a law enforcement officer (primarily police)

  When the IWRC is contacted by and confirms an Immigration Warrant with a police officer, the IWRC notifies the office responsible for the area of jurisdiction where the arrest is made. After normal office hours the duty officer responsible is contacted. If a duty officer cannot be reached, the IWRC makes arrangements to detain the subject until the responsible duty officer/CIC office can be reached. The IWRC maintains a **support system**, the Confirmation and Tracking System (CATS), to effectively carry out this activity. It is the responsibility of the responding Immigration Officer to update the FOSS warrant screen.

3.5.1 Duty Officer and CIC office responsibilities

Once the IWRC links the Duty Officer or CIC office to the police agency, that CIC office is fully accountable for the case. It is critical that assigned duty officers maintain 100 percent availability to IWRC and police agencies.

The IWRC must be immediately informed of any change to a CIC's confirmation and tracking information. (Refer to APPENDIX I and APPENDIX J).

The originating CIC file **MUST** be clearly labelled as a warrant case and must be available to send to the requesting office when the warrant is executed.

3.6 Amending a warrant

If a warrant requires an amendment, such as completion of physical description, the amendment process below ensures the changes are also recorded on CPIC:

- enter the changes on FOSS;
- print a copy of the screen;
- highlight the changes made; and,
- forward the copy to the IWRC (telephone the IWRC if the changes require urgent notification).

If the amendment of an Immigration Warrant on CPIC involves a change in reason for arrest, the office making the change must:

- cancel the existing warrant on FOSS;
- **IMMEDIATELY** notify the IWRC by telephone (this will ensure that the warrant package is not returned due to cancellation);
- enter the new warrant information on FOSS; and,
- notify the original office of the action and submit a new warrant package to the IWRC.

*Note: The above procedures are **MANDATORY** until programming amendments in the FOSS system can be completed.*

3.7 Cancelling a warrant

When an Immigration Warrant becomes invalid, it must be **IMMEDIATELY** removed from CPIC via the FOSS FDE module. This action removes the warrant from CPIC but retains the warrant information on FOSS.

If the warrant is to be deleted, the FOSS FDE module removes the warrant from both FOSS **and** CPIC simultaneously.

In both cases, the IWRC will forward the warrant file together with a Document Transit and Receipt Form stamped with the cancellation date to the CIC office conducting the action.

3.8 CAUTION – merging clients IDs where there exists an active warrant

When merging client IDs where an active warrant exists, the client ID in which the active warrant is associated **MUST** continue to exist.

CIC's new warrant management process operates on the client ID associated with a warrant. The FOSS system will undergo programming changes in the near future to systematically protect warrant client IDs.

3.9 Validating and purging of warrants

Files should be reviewed once a year to verify the validity of the warrant. In addition, CIC managers are advised by the IWRC manager on matters involving validation and purging of warrants on the CPIC system.

3.10 A105 cases

Warrants issued in support of the Deputy Minister's order, pursuant to Section 105 of the *Immigration Act*, are not to be entered onto the CPIC system. CIC is not actively searching for these individuals. It is vital that CIC personnel entering these cases on FOSS ensure that the an "X" is entered in the A105 field. This ensures that these warrants are not accidentally sent to CPIC and will avoid any jurisdictional conflicts with any other laws of Canada.

3.10.1 Exceptions

When there is a need to activate an A105 warrant, the following process should be followed:

- use the FOSS FDE Module to clear the A105 field;
- notify the IWRC by entering "Y" in the WRC field; and,
- send the original warrant and mandatory documentation to the IWRC.

3.11 Units of business

Units of business are accredited to an office upon the issuance and the execution of an Immigration Warrant. The execution of an Immigration Warrant is equivalent to the completion of the Notice of Arrest form. A unit of business and associated credit is awarded only once for the execution of any Immigration Warrant.

3.11.1 Exceptions

Therefore, when a person is arrested on the basis of an Immigration Warrant, a Notice of Arrest form **SHOULD NOT** be completed unless:

- new allegations come to light; and/or,
- the person has eluded examination and no report exists.

The awarding of units of business for the execution of Immigration Warrants as well as the completion of Notice of Arrest and Section 27 forms is monitored.

3.12 Questions and queries

For general questions or queries, CIC staff can contact the IWRC dispatch officers at (613) 954–2344.

Should you have specific FOSS related questions you may wish to call the FOSS Help Desk at (613) 954–5293

4. PRIVACY, ACCESS TO, AND DISCLOSURE OF CPIC INFORMATION

This Section discusses the legal obligations of CIC officers in collecting, using, protecting, disclosing and disposing of information, particularly personal information, on the CPIC system.

4.1 Privacy

All clients are entitled to the protection of their personal information. Personal information is information recorded in any form concerning an identifiable individual. A more precise definition can be found in Section 3 of the *Privacy Act* (reference APPENDIX K).

4.2 Collection and use of CPIC information

Information on CPIC may be collected and used only for lawful business purposes within CIC's legislated mandate, in accordance with CPIC policy, and the Department's MOU with CPIC. In summary, queries are to be conducted only in relation to lawful investigations as defined by the *Immigration Act*.

In keeping with privacy standards, personal information should, whenever possible, be collected directly from the individual. Only the minimum necessary **personal** information can be collected from CPIC.

4.2.1 Information collection from CPIC

Information, including personal information, is collected from CPIC by making a query. When making a query, the *Privacy Act* requires that the user demonstrate a legitimate business need for the query. CPIC policy, consistent with the *Privacy Act*, requires the following information in the CPIC query remarks field:

- the full name of the person initiating the query (**NO** initials, nicknames or other);
- the name of the officer making the query (**NO** initials, nicknames or other);
- the reason for the query; and,
- the related case number, if available.

If CPIC printouts are maintained on CIC files, there must be absolute proof that the CPIC information relates to the subject named on the file. Absolute proof constitutes a fingerprint (FPS number) match, **THERE IS NO OTHER FORM OF ABSOLUTE PROOF.** Where no fingerprint match is available, one should be initiated through the submission of the client's fingerprints to the RCMP.

4.2.2 Recording on FOSS information collected from CPIC

To prevent the possibility of unauthorized disclosure, information collected from CPIC should not be recorded on the FOSS data bank. However, a notation can be made on FOSS stating that information from CPIC exists, as well as an indication as to where it can be found.

4.2.3 Collecting CPIC information on CIC files

A notation can be made in CIC files to indicate the existence of CPIC information and where it can be found. Where it is absolutely necessary to place CPIC information on files, for example, when CPIC information is the basis of an administrative decision to take enforcement action against the subject of a file, there must exist absolute proof that the CPIC information relates to the subject and **ONLY** the subject of the CIC file. This means that there **MUST** be a fingerprint (FPS number) match. Where no fingerprint match is available, one should be initiated through the submission of the client's fingerprints to the RCMP.

4.2.4 Unauthorized collection of CPIC information

CIC enforcement officers can be involved in "Joint Forces Operations" conducted in partnership with Category I police agencies. These agencies are permitted to collect more types of information from CPIC than is CIC. For example, unlike a category I agency, CIC may not access or collect surveillance records from CPIC.

When involved in a "Joint Forces Operation", unless the police agency has specific **WRITTEN** policy permitting agencies such as CIC to collect such information on files:

- CIC officers **MAY NOT** divulge to other CIC personnel or record on CIC files any information to which they were made privy by the category I agency during the course of the operation; and,
- CIC officers working on the premises of a category I police agency **CANNOT** use that agency's CPIC terminal to access CPIC information or receive information originating from the category I agency's CPIC terminal that the Department is not permitted to collect.

4.3 Disclosure

The *Privacy Act* entitles all clients to view, or authorize a third party to view, their personal information.

4.3.1 Classified or exempt data banks

CPIC is considered to be a classified or protected data bank for the purposes of the *Privacy Act,* as the disclosure of the information contained therein could be injurious to the enforcement of Canadian laws or the conduct of lawful investigations.

This means information collected from the CPIC data bank, including personal information, cannot be released to any individual or organization without the consent of the CPIC agency that contributed that information.

4.3.2 Requests for disclosure of CPIC information

All formal requests for or questions regarding the disclosure of personal information under the *Privacy Act* or *Access to Information Act* should be directed to the privacy coordinator in your office or region, or to National Headquarters, as applicable.

For the purposes of formal and informal disclosure, all of the client's CIC files must be reviewed. To access an IWRC file, the client must make a separate request for information to the IWRC under the *Privacy Act* or *Access to Information Act* as indicated in InfoSource.

All CPIC information, including CPIC printouts and information collected from CPIC and notated on CIC files or on FOSS is exempt information. This information must be forwarded, as Protected "B" information, to the Public Rights Administration Directorate for exemption or for approval for its release from the contributing agency. The address of the Public Rights Administration Directorate is as follows:

Public Rights Administration Directorate
Finance and Administration
Corporate Management Sector
Citizenship and Immigration Canada
300 Slater Street, 3rd Floor
Ottawa, Ontario
K1A 1L1

4.3.3 Improper or unauthorized use or disclosure of CPIC information

All officers with access to the CPIC system must sign and abide by the CPIC Waiver (APPENDIX A).

Specifically, officers acknowledge that personal information can be:

- **USED** only for legitimate business needs as defined in section 4.2; and,
- **DISCLOSED** only to another individual or third party, such as data bank, organization or department legally authorized to access that information,

in accordance with the CPIC policy provisions of the *Privacy Act*, *Access to Information Act* and/or applicable provincial data protection legislation.

Your privacy coordinator can advise you if information intended for release is in accordance with such data protection legislation.

Unauthorized or improper disclosure implies that personal information belonging to another individual or any other information found in the CPIC data banks is disclosed for purposes other than the legitimate business needs of this Department. (Refer to MOU with CPIC Services, APPENDIX H.)

Unauthorized or improper use or disclosure of CPIC information can result in serious consequences for the abusing officer and for the Department.

These include:

- disciplinary action;
- charges under the *Criminal Code* (Sections 342.1 and 431);
- dismissal from employment;
- loss of departmental privileges to access CPIC; and,
- loss of the trust and confidence of law enforcement partners.

Any potential or actual occurrence of unauthorized or improper disclosure must be reported **IMMEDIATELY** through the manager/director, and regional channels, to the Director General, Enforcement Branch, National Service Sector. Potential cases of improper disclosure are to be investigated by the manager/director who will apply any corrective action, including disciplinary action, if required. Detailed policies and procedures concerning improper disclosure can be found in section 1, Chapter 2, SubSection 9.4 of the CPIC Reference Manual.

4.3.4 Court–ordered disclosure

When a court of law orders the contents of a hard copy file to be disclosed, all contents must be disclosed in their entirety. This includes information from FOSS, CPIC, other data banks, and any other organizations. For this reason, only information relating to the person named on the file should be placed in the hard copy file.

CIC managers should comply with any court–ordered disclosure of a CIC file unless it is judged that the release of the information contained in the file would be injurious to international affairs or national defence or security. In these cases, the court–ordered disclosure must be forwarded, along with the file in question, to the Director of the Public Rights Administration Directorate at National Headquarters.

4.3.5 Immigration inquiries

If a CIC file is to be used at an immigration inquiry, all information from the CPIC data bank must first be removed.

However, CPIC information may be released if the following conditions are met, **WITHOUT EXCEPTION:**

- there is absolute proof that the CPIC information relates to the subject of the immigration inquiry. This means that there must be a fingerprint (FPS number) match. Where no fingerprint match is available, one should be initiated through the submission of the client's fingerprints to the RCMP;
- the CPIC information pertains **ONLY** to convictions (as these are public records);
- there is no evidence, on the CPIC print out or any other items, of how the query was conducted; and,
- prior written approval has been obtained from the CPIC agency owning the information if the information pertains to anything other than conviction information.

4.4 Retention of CPIC information

All information contributed to or received from CPIC is supplied in confidence and must be protected against disclosure to unauthorized agencies or individuals.

If CPIC information is used to make an administrative decision, a hardcopy of that information must be retained on the relevant CIC file for a period of two years.

All CPIC information, including CPIC printouts, must be kept in an area that is secure and not visible to the public.

4.4.1 Monitoring CPIC queries

All queries and other transactions made in CPIC are monitored and recorded. This is in accordance with CPIC policy, the Department's MOU with CPIC Services and the *Privacy Act.*

4.4.2 Disposing of Protected "B" information

Most CPIC information is designated Protected "B" information and must be destroyed in accordance with CIC policies pertaining to the disposal of designated materials. CPIC information that is no longer required must be disposed of by shredding on a regular basis.

5. AUDIT OF CPIC EQUIPMENT, SECURITY AND USE

Discussed in this section are the audit functions of the Immigration Warrant Response Centre. Included are all items subject to audit, as well as an outline of management responsibilities when an audit occurs.

5.1 Auditing the use of the CPIC system

As a user of the CPIC system, CIC and its employees must comply with:

- the terms of the Department's MOU with CPIC Services (see APPENDIX H);
- CPIC policy;
- the federal *Privacy Act*;
- applicable provincial data protection legislation;
- applicable federal Treasury Board guidelines; and,
- CIC's CPIC Waiver,

by taking all necessary precautions on the use and dissemination of information, including personal information, on the CPIC system.

To ensure that CIC and individual CIC personnel with direct access to the CPIC system uphold all terms, conditions and responsibilities associated with this access, CIC and CPIC auditors will:

- audit the validity and accuracy of records entered on the CPIC system;
- examine personnel and site security at CIC access points;
- review CPIC file control;
- monitor narrative traffic log tapes; and,
- ensure that policy and guidelines in the CPIC Reference Manuals, as well as this chapter, are adhered to by the Department.

The manager/director will be notified of audit results.

5.2 Management responsibilities

Managers/directors or their delegates must be available to CPIC and CIC auditors during the audit period. It is the manager's/director's responsibility to make available to auditors all necessary assistance to enable a complete physical audit of the office's warrant files as well as its use of CPIC. The manager/director must also produce, at the auditors' request, any resources related to the CPIC system, including:

- CIC policy or directives concerning the dissemination of CPIC information;
- CPIC Reference Manuals and validation lists; and,
- personnel security screening and other security procedures.

Managers/directors or their delegates **MUST** attend the briefing or debriefing of the audit teams. When requested to do so, managers/directors **MUST** submit a report to the auditing teams detailing the corrective actions taken with respect to problems identified. At the

request of the auditing teams, the manager/director **MUST** remove or correct any record entries that do not conform to the CPIC Reference Manuals, and/or this Department's policies.

5.3 Audit review channels

All audit reports, management responses or comments, as well as any reports of corrective action taken by managers/directors must be forwarded, through the appropriate channels, to the Director General, Enforcement Branch, National Service Sector.

6. PHYSICAL SECURITY OF OFFICES WITH ACCESS TO CPIC

6.1 Physical security

The measures contained in APPENDIX G are the absolute minimum physical security, hardware and software requirements for an office with direct access to CPIC.

APPENDIX G outlines the security measures required by CPIC policy, the Government of Canada's Security Policy and the Department's security standards for CIC's direct on–line access to the CPIC system, as well as the handling of Protected "B" information collected from the system.

It is the manager's/director's responsibility to ensure that these standards are applied, and maintained in their respective areas of responsibility. All short falls are to be corrected immediately.

7. PROVIDING FEEDBACK ON THIS MANUAL CHAPTER

If you wish to comment on, clarify, add to or delete information contained in this manual chapter, please forward your written comments, rationale, as well as the signature of your office manager, and your name and telephone number to:

The Manager
The Immigration Warrant Response Centre
Citizenship and Immigration Canada
9th Floor, Section A
300 Slater Street
Ottawa, Ontario
K1A 1L1

When making amendments to this manual chapter, IWRC staff will take into consideration all comments received.

APPENDIX A

ACKNOWLEDGEMENT OF RESTRICTIONS RESPECTING THE HANDLING OF CPIC MATERIALS, RECORDS AND INFORMATION (CPIC WAIVER)

In this document:

"CPIC" and "CPIC system" mean the Canadian Police Information Centre computer system of the Royal Canadian Mounted Police;

"CIC" means Citizenship and Immigration Canada;

"information" includes knowledge of the contents of the CPIC system that has been acquired from the CPIC system or by virtue of a person's access to or employment in connection with the CPIC system, and also includes knowledge of the operation of the CPIC system;

"materiel" means equipment, apparatus and supplies used in connection with the operation, use or maintenance of the CPIC system;

"records" means correspondence, memoranda, papers, books, manuals, maps, photographs, films, microfilms, sound recordings, video recordings, computer cards and tapes and disks, and any other or all other information– or image–bearing materiel regardless of physical form or characteristics, that are made, received or preserved by any person in connection with the operation, use or maintenance of the CPIC system.

I acknowledge that I am fully aware of my responsibilities to safeguard all CPIC materiel, records and information with which I am entrusted or which I encounter by virtue of my employment.

I acknowledge that access to all CPIC materiels, records and information is strictly limited to lawful business purposes only, only in support of lawful law enforcement investigations and CPIC policy and within CIC's legislated mandate. Furthermore, I acknowledge that I may access CPIC materiels, records and information only when it is needed to perform my work and not to satisfy personal curiosity.

I acknowledge that all information contributed to or retrieved from CPIC is supplied in confidence and must be protected against disclosure to unauthorized agencies or individuals. I recognize the necessity to respect the privacy of individuals and agree that any release of information MUST be in accordance with the provisions of the *Privacy Act* and *Access to Information Act* or provincial data protection legislation which may apply. I agree to not further disseminate information obtained from the CPIC system except where there is absolute certainty that its use is consistent with the carrying–out of lawful enforcement duties and responsibilities of CIC.

I acknowledge that audits will be performed on–site by both RCMP–CPIC Services and the Immigration Warrant Response Centre, to ensure that CIC's use of CPIC and the security of CPIC computing devices comply with all policies. I also acknowledge and accept that all transactions made and messages sent on the CPIC system may be monitored and recorded.

I agree that no other person will access any CPIC terminal with my password.

I agree that all CPIC materiel, records and information with which I am entrusted must be dealt with in a manner that ensures it will **not** be disclosed to unauthorized persons, in particular:

(a) CPIC materiel and records must not be removed from the confines of the office without the approval of my supervisor, and when any such materiel or records are removed, a record must be kept detailing what is being removed and to where it is being removed;

(b) after working hours, all CPIC records and, where possible, materiel, must be secured from access by unauthorized persons;

(c) all CPIC materiel and records connected with or arising out of my work must be kept in accordance with the preceding paragraphs (a) and (b);

(d) all CPIC materiel and records must be turned in to my supervisor prior to my transfer or termination of my employment;

(e) all CPIC information which I may acquire or to which I may have access at any time cannot, without lawful authority, be communicated or revealed to any other person or published in any form.

I acknowledge that I have read the foregoing instructions and acknowledgements and that I am fully aware that any breach of the *Criminal Code* (Breach of trust by a public officer – A122, and Unauthorized use of a computer – A342.1(1)), or the *Immigration Act* (Offenses respecting immigration officers and adjudicators – A98), or the Employment and Immigration Code of Conduct for Commission and Departmental Staff, as related to the release of client information (3:060) and the Oath of Office (4:010, 011 and 020), or the *Official Secrets Act*, or the above acknowledgements, could result in lawful sanctions including the loss of my access to CPIC, dismissal from my employment and/or the loss of CIC's access to CPIC.

Employee Name (printed)	*Employee Signature*	*P.R.I.*	/ / *Date (d/m/y)*

Manager Name (printed)	*Manager Signature*		/ / *Date (d/m/y)*

Termination of Service

(To be completed when the Employee terminates his/her services)

I, the Employee below, declare that I have not in any way retained any CPIC materiel or records, and that I will continue to protect the confidentiality of all CPIC information in accordance with the "Acknowledgement of Restrictions Respecting the Handling of CPIC Materials, Records and Information".

Employee Name (printed)	*Employee Signature*	*P.R.I.*	/ / *Date (d/m/y)*

Manager Name (printed)	*Manager Signature*		/ / *Date (d/m/y)*

APPENDIX B
DOCUMENT CHECKLIST FOR SUBMISSION TO IWRC

Client Identification Number

CRIMINALITY CASE

☐ YES ☐ NO

☐ ORIGINAL WARRANT ☐ WARRANT SCREEN ☐ FINGERPRINTS ☐ CASE HIGHLIGHTS/ SUMMARY

☐ PHOTOGRAPH ☐ TOMBSTONE DATA

☐ Original
☐ Photocopy
☐ Photophone
☐ Not Available

☐ Bio–data page from Passport
☐ Birth Certificate
☐ Other proof of identity
☐ Not Available

Warrant Document Number

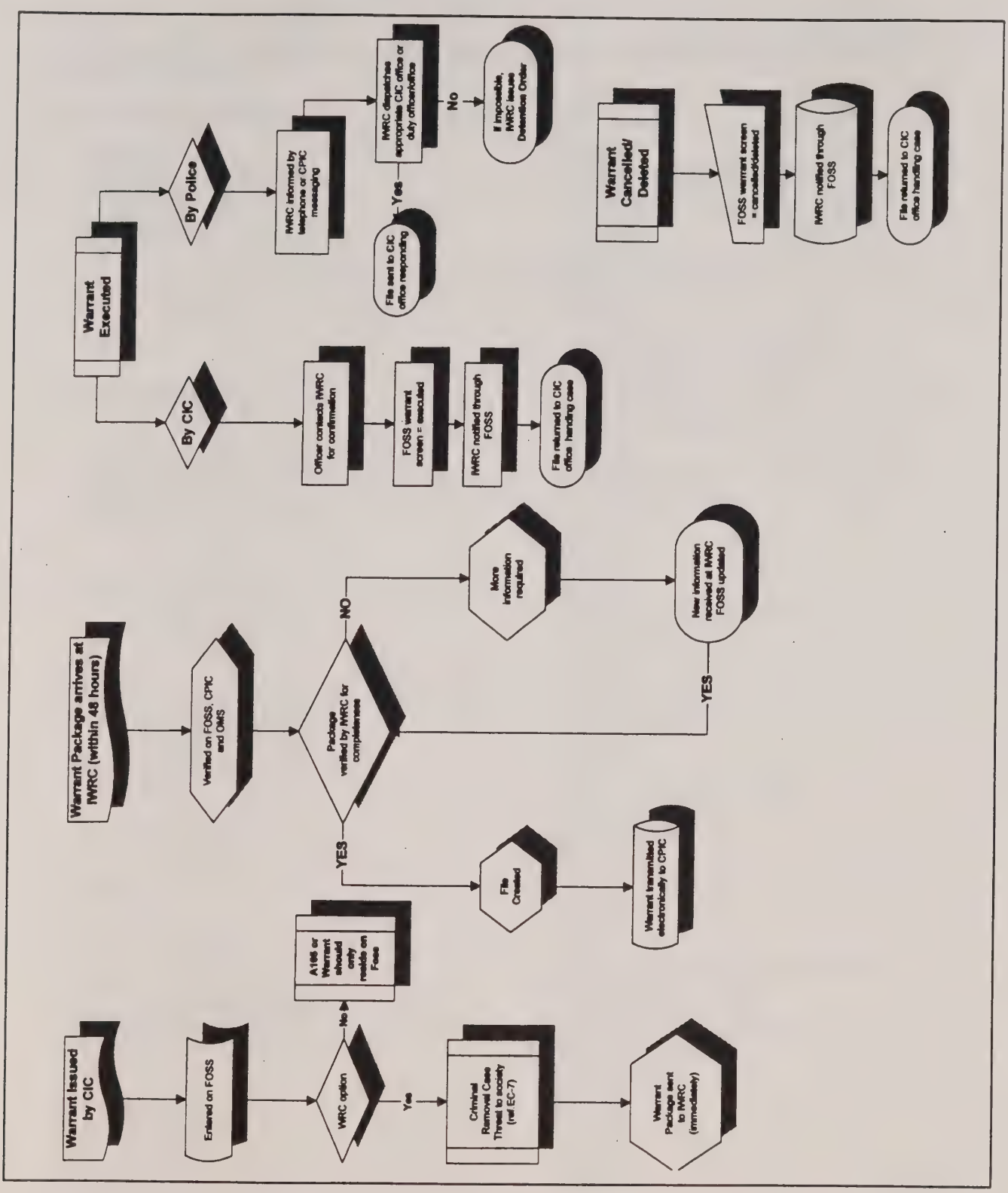
NOTES	DATE	IWRC Officer

Notes on reverse ▶

APPENDIX B (CONT'D)
DOCUMENT CHECKLIST FOR SUBMISSION TO IWRC

NOTES	DATE	IWRC Officer

APPENDIX C
CPIC WARRANT PROCESS FLOWCHART



APPENDIX D
RCMP FIELD OPERATIONS/CPIC SERVICES CONTACT LISTS

These offices can be contacted if you have questions or queries regarding the CPIC system or if you require immediate assistance.

Alberta/Northwest Territories

Manager
CPIC Field Operations Section
11140–109th Street
Edmonton, Alberta
T5G 2T4

Tel.: 403–495–6443
Fax: 403–495–6442

AB11777

British Columbia/Yukon

Manager
CPIC Field Operations Section
657 West 37th Avenue
Vancouver, British Columbia
V5Z 1K6

Tel.: 604–264–2415
Fax: 604–264–3163

BC11777 or YT11777

Manitoba

CPIC Field Operations Office
1091 Portage Ave, Box 5650
Winnipeg, Manitoba
R3C 3K2

Tel.: 204–983–7510
Fax: 204–984–4154

MB11777

New Brunswick

Manager
CPIC Field Operations Section
1445 Regent St. Box 3900
Fredericton, New Brunswick
E3B 4Z8

Tel.: 506–452–3423
Fax: 506–452–3979

NK11777

Newfoundland

Manager
CPIC Field Operations Section
Station B Box 9700
St. John's, Newfoundland
A1A 3T5

Tel.: 709–772–5011
Fax: 709–772–0958

NF11777

Nova Scotia/Prince Edward Island

CPIC Field Operations Section
1600 Bedford Hwy Ste 210
Bedford, Nova Scotia
B4A 1E8

Tel.: 902–426–2206
Fax: 902–426–5351

NS11777

Ontario

Manager
CPIC Field Operations Section
155 McArthur Rd
Ottawa, Ontario
K1A 0R4

Tel.: 613–993–7329
Fax: 613–998–1747

ON11778

CPIC Field Operations Office
Box 519 Adelaide P.O.
Toronto, Ontario
M5C 2M3

Tel.: 416–973–0292
Fax: 416–954–0881

ON11777

Manager Operational Support Services
Ministry Solicitor General
Policing Services Division
Police Support Programs Branch
25 Grosvenor Street
Toronto, Ontario
M7A 2H3

Tel.: 416–314–3025
Fax: 416–314–3040

ON40050

Quebec

Manager
CPIC Field Operations Section
4225 Blvd Dorchester
Westmount, Québec
H3Z 1V5

Tel.: 514–939–8644
Fax: 514–283–2574

PQ11777

Le Responsable
MTL SQ Informatique CRPQ
1701, rue Parthenais
Montréal (Québec)
H2L 4K7

Tél: 514–598–4342

PQ40055

Responsable d'Unité
MTL SQ Service de vérification
255 boul. Crémazie est, bureau 9.05
Montréal (Québec)
H2M 1L5

Tél: 514–596–3545

PQ40005

Saskatchewan

Manager
CPIC Field Operations Section
Bag Service 2500
6101 Dewdney Avenue
Regina, Saskatchewan
S4P 3K7

Tel.: 306–780–5517
Fax: 306–780–8385

SN11777

APPENDIX E

SAMPLE OF FORM TBS/SCT 330–23 – PERSONNEL SCREENING REQUEST AND AUTHORIZATION

Government of Canada / Gouvernement du Canada

PROTECTED WHEN COMPLETED
PROTÉGÉ UNE FOIS REMPLI

PERSONNEL SCREENING REQUEST AND AUTHORIZATION
DEMANDE D'ENQUÊTE DE SÉCURITÉ SUR LE PERSONNEL ET AUTORISATION

- *SEE REVERSE FOR PRIVACY ACT STATEMENT AND COMPLETION INSTRUCTIONS.*
  VOIR VERSO POUR ÉNONCÉ CONCERNANT LA LOI SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS ET DIRECTIVES.
- *PLEASE TYPEWRITE OR PRINT IN BLOCK LETTERS.*
  PRIÈRE DE DACTYLOGRAPHIER OU D'ÉCRIRE EN LETTRES MOULÉES.

Department no. Nº du ministère

File number Nº de dossier

The requested level of reliability / security check is:
Le niveau de la cote de fiabilité / sécurité demandé pour la personne nommée est:

- ☐ BASIC RELIABILITY CHECK / VÉRIFICATION DE BASE DE LA FIABILITÉ
- ☐ ENHANCED RELIABILITY CHECK / VÉRIFICATION APPROFONDIE DE LA FIABILITÉ
- ☐ LEVEL I (CONFIDENTIAL) / NIVEAU I (CONFIDENTIEL)
- ☐ LEVEL II (SECRET) / NIVEAU II (SECRET)
- ☐ LEVEL III (TOP SECRET) / NIVEAU III (TRÈS SECRET)
- ☐ OTHER / AUTRE

Surname Nom de famille

Full given names (no initials) underline usual name used
Prénoms au complet (pas d'initiales) souligner le prénom usuel

Family name at birth Nom de famille à la naissance

All other names used Tout autre nom utilisé

Date of birth Date de naissance (Y-A / M-M / D-J)

Sex Sexe ☐ Male / Masculin ☐ Female / Féminin

Telephone number Numéro de téléphone
HOME: DOMICILE: ( )
WORK: TRAVAIL: ( )

Home address Adresse du domicile

City Ville

Province

Postal code Code postal

Originator's name and address Nom et adresse de l'expéditeur

Telephone Téléphone ( )

Facsimile Télécopieur ( )

☐ Indeterminate / Période indéterminée → Position / Competition / Contract number / Title / Numéro de poste / concours / marché / titre _____ Group / Level / Groupe / niveau _____

☐ Term / Période déterminée → From: / De: _____ To: / A: _____

☐ Contract / Contrat → From: / De: _____ To: / A: _____ ☐ Other (specify) / Autre (préciser) _____

NOTE: Unless cancelled in writing by the applicant, this consent form shall be valid for conducting the specified checks including subsequent updating requirements of the Government Security Policy.

I, the undersigned, do hereby consent to the disclosure of the following information and its subsequent verification.

NOTA: À moins qu'elle ne soit annulée par écrit par le candidat, la présente formule de consentement demeure valide en vue de mener des vérifications précises, y compris toute demande de mise à jour ultérieure en vertu de la Politique du gouvernement sur la sécurité.

Je, soussigné, consens par la présente à la divulgation des renseignements suivants et à leur vérification ultérieure.

Individual's signature Signature de la personne

Date

	Information Renseignements	Y	Z		Information Renseignements	Y	Z
1	Date of birth / Date de naissance			6	Criminal record check / Vérification de l'existence d'un casier judiciaire		
2	Address / Adresse			7	Credit check / Vérification du dossier de crédit		
3	Education / Professional qualifications / Études / Compétences professionnelles			8	Reliability / Fiabilité		
4	Employment history / Antécédents professionnels			9	Loyalty (security assessment only) / Loyauté (évaluation sécuritaire seulement)		
5	References / Personal character / Références / Mon caractère			10	Other (specify, see instructions) / Autre (préciser, voir les directives)		

I, the undersigned, as the authorized official, do hereby certify that the above information has been verified. The requested level of Basic/Enhanced Reliability is granted.
Je, soussigné, en tant qu'agent autorisé, certifie que les renseignements ci-dessus ont été vérifiés. La cote de fiabilité de base/fiabilité approfondie est accordée.

Signature

Y-A M-M D-J

Name and title of authorized official / Nom et titre de l'agent autorisé

Office address Adresse au bureau

Telephone Téléphone ( )

Facsimile Télécopieur ( )

TBS/SCT 330-23 (Rev. 1992/06) 7540-21-909-1925 TBS/APB-055-02670

1 – SECURITY SÉCURITÉ

APPENDIX F
SAMPLE OF FORM C-216C – RCMP IDENTIFICATION FINGERPRINT SHEET

FOR IDENTIFICATION PURPOSE ONLY ***AUX FINS DE L'IDENTIFICATION SEULEMENT***

SURNAME (Include former names, maiden name, etc.) – *NOM DE FAMILLE (y compris noms utilisés précédemment, nom de jeune fille, etc.)*

Given names – *Prénoms usuels*

FOR RCMP IDENTIFICATION SERVICES USE
À L'USAGE DU SERVICE DE L'IDENTITÉ JUDICIAIRE DE LA G.R.C.

Address – *Adresse*

Postal Code – *Code postal*

Birthdate – *Date de naissance*

Sex – *Sexe* ☐ M ☐ F

Phone No. – *N° de tél.*

Applicant for – *Demande aux fins de*

	THUMB – *POUCE*	INDEX	MIDDLE – *MÉDIUS*	RING – *ANNULAIRE*	LITTLE – *AURICULAIRE*	
R I G H T						D R O I T E
L E F T						G A U C H E

IF ANY FINGERPRINT IS NOT RECORDED, GIVE REASON FOR OMISSION – IF AMPUTATED, GIVE DATE
SI UNE EMPREINTE DIGITALE QUELCONQUE N'EST PAS APPOSÉE, INDIQUER POURQUOI. S'IL Y A EU AMPUTATION, DONNER LA DATE

Four fingers printed simultaneously
Impression simultanée des quatre doigts

Left Thumb
Pouce gauche

Right Thumb
Pouce droit

Four fingers printed simultaneously
Impression simultanée des quatre doigts

Signature of official taking fingerprints
Signature du préposé aux empreintes

Date

Signature of person fingerprinted
Signature de la personne dactyloscopiée

Name and Address of Fingerprinting Dept. or Agency – *Nom et adresse du service ou de l'agence prenant les empreintes*

Level of Security Clearance Required – *Niveau d'habilitation sécuritaire requis*

☐ Confidential *Confidentiel* ☐ Secret ☐ Top Secret *Très secret* ☐ S.A. *A.S.*

FOR RCMP IDENTIFICATION SERVICES USE
À L'USAGE DU SERVICE DE L'IDENTITÉ JUDICIAIRE DE LA G.R.C.

NOTE: When this form is used for employment purposes within the RCMP, advise the individual that the information is collected under the RCMP ACT and is used for security/reliability screening to determine suitability for service with the Force. The provisions of the Privacy Act pertaining to access, collection, accuracy, completeness and amending incorrect data apply.

NOTA: Lorsqu'on se sert de la présente formule à des fins d'emploi à la G.R.C., informer le postulant que les renseignements sont recueillis en vertu de la Loi sur la G.R.C. et servent au triage sécuritaire ou de fiabilité afin de déterminer l'aptitude au service dans la Gendarmerie. Les dispositions de la Loi sur la protection des renseignements personnels s'appliquent en ce qui concerne l'accès, la cueillette, l'exactitude, l'état complet, et la modification de renseignements inexacts.

FOR USE OF CONTRIBUTING DEPT., OR AGENCY
À L'USAGE DU CONTRIBUTEUR – SERVICE OU AGENCE

PIB / B.R.P.	RCMP / G.R.C.	P20	P30	P-P100	P-P110

RCMP GRC C-216C (88-02) 7540-21-962-7891

APPENDIX G
SITE SECURITY DOCUMENT

Security Imperatives for Citizenship and Immigration Canada (CIC) Users Accessing the Canadian Police Information Centre (CPIC)

The Government Security Policy requires that security awareness be continually reinforced. The following is issued, pursuant to that requirement, by CIC's Security and Investigations Division.

A. INTRODUCTION

1. The Canadian Police Information Centre (CPIC)

1.1 CPIC is a national repository of police operational information managed by the RCMP, and is a shared resource vital to Canadian law enforcement. Using computerized files and telecommunications technology to store, retrieve and communicate information, CPIC's complex computer network enables police officers and other enforcement users across the country to access via terminal the CPIC mainframe and data storage at RCMP Headquarters in Ottawa. Three types of CPIC transaction are commonly used:

- users contribute investigative information to the system;
- users, during an investigation, query the system with information to attempt a "match" (or "hit") with information already stored there; and,
- users communicate "hit confirmation" (urgent) or "narrative traffic" (non–urgent) messages to up to eight other users.

1.2 All information contributed to or retrieved from CPIC is supplied in confidence, and must be protected against unauthorized disclosure.

2. CIC's Field Operations Support System (FOSS)/CPIC Interface

2.1 Citizenship and Immigration's approved CPIC initiative involves an interface linking the FOSS and CPIC systems, and the creation in Ottawa of a CIC Immigration Warrant Response Centre (IWRC) operating 24/7. This interface gives authorized CIC staff and Canadian police personnel the mutual ability to query either system for specific and limited information, thus greatly enhancing CIC–police communication. In addition, to reduce paperburden and to avoid duplicate data entry concerning Immigration Warrants, those having to do with criminality and entered into the (decentralized) FOSS system will be electronically transferred to CPIC from the IWRC in Ottawa. This office is now responsible for managing the warrants (including maintaining the originals in a registry), confirming them with police, informing Immigration Centres and duty officers across Canada, and dispatching Immigration officers to respond to warrant "hits".

2.2 The quality and effectiveness of this police support system depend on correct user procedures. In fact, regarding accuracy and relevance of data, the individual terminal operator is the most important link in the entire network and therefore will want to apply good security practices. The following imperatives governing primarily physical security have been prepared to assist CIC managers and staff using the FOSS/CPIC interface, so that effective security may be applied and the protection of CPIC information may be assured.

B. SECURITY IMPERATIVES

1. General Principles

1.1 The Deputy Minister is accountable for safeguarding sensitive information and assets but, because virtually all CIC employees deal with or have access to such holdings, this safeguarding becomes an individual responsibility. "Security" itself is, under the Policy, something that is value–added to our daily work and it must be demonstrable that employees take all "due care" as custodians of sensitive material.

1.2 Good security aims to "prevent the unauthorized disclosure, destruction, removal, modification or interruption" of sensitive information and assets. "Prevention" not only means identifying sensitive material, treating it with care, safeguarding it during its lifetime, downgrading or declassifying it when warranted, and disposing of it properly; it further means ensuring that those who have no business accessing it, in fact do not and cannot –– since neither convenience nor rank entitles a person to access. "Sensitivity" in the security context is based on the exemptions in the Access to Information Act and the Privacy Act. Sensitive information is marked either Classified (sensitive in the national interest) or Designated (sensitive, not in the national interest, but in that its unauthorized disclosure could cause injury to particular public or private interests). Originators marking sensitive information as either Classified (CONFIDENTIAL, SECRET or TOP SECRET) or Designated (PROTECTED A, B or C), signal who may access it. Thus, the following general principles:

- all employees are responsible for practising good security;
- access is limited to those who have a "Need to Know", and who are screened to the appropriate level of access, viz.:
  - i) Enhanced Reliability may access Designated material; and,
  - ii) Level I, Level II or Level III Security Clearance may access respectively CONFIDENTIAL, SECRET or TOP SECRET material;
- the recipient department of classified or designated information shared by another department must safeguard that information at the same level of security –– or greater, as a Threat and Risk Assessment (TRA) may warrant –– as was originally applied;
- where a TRA so warrants, additional protection measures are applied;
- the combination/configuration of several varied safeguards is better at preventing access than is a single safeguard; and,
- security incidents, breaches and violations must be reported immediately to the office supervisor or manager, and to the security officer.

2. "PROTECTED B" in High Risk Situations

The FOSS/CPIC interface system deals primarily with particularly sensitive personal information which is designated as PROTECTED B, since it concerns such matters as name, personal history, citizenship, criminal or other records, and so on. The unauthorized access to, or disclosure of, this information could result in serious injury to individuals. The following therefore relates to safeguarding the PROTECTED B FOSS/CPIC information in the Immigration Warrant Response Centre and in any CIC office where a computer terminal may access CPIC through FOSS.

2.1 Areas where CIC–CPIC micro–computers and warrant registry are located must be considered Operation Zones as defined by the Policy, and as such must display security features commensurate with the sensitivity of the material being processed, viz.:

i) the zones are Restricted;

ii) all CIC–CPIC "PASSKEYS" and associated PINs are safeguarded at all times;

iii) the sites possess lockable containers to secure documents and items;

iv) the micros either are themselves located in a secure room, or are otherwise secured from overview or other unauthorized access;

v) keys to security containers are safeguarded and must be changed if their locks have been –– or may have been –– compromised (a room, with appropriate security, may itself be considered a security container);

vi) no particularly sensitive information is removed from the zone, except under safeguarded and controlled circumstances;

vii) CIC–CPIC users must not leave unattended any micro in operation – should the terminal be left unattended, it must be placed in secure mode;

viii) diskettes and hard copy printouts must be locked up when not in use;

ix) "PROTECTED B" must be marked in the upper corner of hard copy pages;

x) paper tape, printer ribbon, diskettes and carbon paper must be treated as Designated waste; and,

xi) all CIC–CPIC waste is treated as sensitive, destroyed by an approved Type III shredder and, as waste in bins, properly secured with access controls.

2.2 Personnel having access must hold at least an Enhanced Reliability security screening, updated at least once every ten years, and must have a need to access, viz.:

i) security screening must be completed before any CIC–CPIC user is given access;

ii) only need–to–know, properly–screened CIC–CPIC users have access to micros;

iii) ALL visitors must be escorted, and their presence always supervised;

iv) contracted cleaning should occur during standard working hours, it must be supervised, and the cleaners must hold Enhanced Reliability security screening; and,

v) all commissionnaires and security guards must have Enhanced Reliability security screening.

2.3 Telecommunicating and transmitting PROTECTED B information must meet the security standards set by the Policy, viz.:

i) standard fax or E–mail systems must not be used to communicate either PROTECTED B or C, or any Classified information –– use only secure fax and secure telephone equipment (STU IIIs); and,

ii) when sending particularly sensitive material outside a controlled area, use –– as minimum protection –– a single, sealed, addressed envelope (with no security marking) sent 1st Class mail or by reliable courier providing proofs of mailing or transit records; if in doubt, have the sealed material transported by someone screened to the appropriate level.

2.4 Management is responsible for understanding and implementing the security policy, and for eliciting staff support in properly applying good security practices, viz.:

i) identify information and assets needing designation or classification as sensitive;

ii) review work descriptions and screenings to ensure employees' screenings are accurate and current;

iii) assist and support employees who show concern about deficient security;

iv) plan for, implement and monitor appropriate security measures;

v) ensure that staff understand their rights and responsibilities under the Policy; and,

vi) report all incidents, breaches and violations to your security officer.

3. Information Technology (IT) Security

3.1 Specifics of IT security imperatives are available in the attached document entitled "Information Technology (IT) Security Operational Policies for Citizenship and Immigration Canada (CIC) Offices Accessing the Canadian Police Information Centre (CPIC)".

4. Security Responsibility

4.1 The set of security imperatives outlined above reminds CIC FOSS/CPIC managers and staff that there is a need for effective security at Citizenship and Immigration Canada, that the responsibility for good security belongs to us all, and that government and public confidence in CIC's security system is greatly increased when the policy is properly applied.

Issued by:
Departmental Security Officer
Citizenship and Immigration Canada

Information Technology (IT) Security Operational Policies for Citizenship and Immigration Canada (CIC) Offices Accessing the Canadian Police Information Centre (CPIC)

Roles and Responsibilities

A) The Departmental IT security coordinator, who is the Chief, IT Security Unit, Information Systems and Technologies Branch, is responsible for the development of these policies and the monitoring of their implementation.

B) The office manager is responsible for ensuring that these policies are met.

C) The local IT security officer, who is typically a LAN administrator formally appointed to the CIC IT Security Network, is responsible to the office manager for carrying out the day–to–day activities related to these policies.

IT Security Policies

1. Organizing and Administering IT Security

1.1 Each office shall comply with the Treasury Board Manual, Security Volume, IT Security Standard, Section 2–3.

1.2 Each office shall comply with the Technical Security Standards for Information Technology (TSSIT), RCMP, 1995.

1.3 Each office shall comply with the CIC IT Security Policies and Standards.

1.4 Each office shall specify security requirements in all contracts with external organizations where those contracts could affect the security of CPIC data and services. The Security Requirements Checklist (SRCL) shall be used to formally document security requirements.

1.5 The local IT security officer, or alternate, shall review these CPIC Operational IT Security policies minimally annually for compliance.

1.6 IT security–related incidents (breaches or violations) affecting CPIC services shall be immediately reported to the local IT security officer and the Departmental IT security coordinator.

2. IT Security and Personnel Security

2.1 Each office manager is responsible for:

- verifying that the appropriate security screening type and level has been specified for each position or contract, according to the highest level of sensitivity of information within CPIC which might be accessed by the person occupying that position or performing the contracted duties;
- ensuring that personnel and contractors have been security screened to the level specified for their position or contract prior to authorizing their access to CPIC–related information or other assets; and,
- maintaining a current list of positions requiring access to CPIC, the screening level specified for the position, and the actual screening level granted to the personnel occupying the positions.

2.2 Office technology administrators shall undergo the same minimum personnel screening requirements as CPIC users.

2.3 Each office's IT security awareness program shall include CPIC–specific awareness items, such as:

- security features and vulnerabilities specific to CPIC, such as Windows™ data clipping and pasting and hard disk caching;
- new CPIC security issues;
- CPIC specific security violations; and,
- procedures for reporting security breaches, violations or concerns,

through such means as:

- IT security briefings;

- security notices, pamphlets and signs; and,
- security videos (available on loan from the CIC IT Security Unit).

2.4 Security briefings shall be given to personnel and contractors who will have access to CPIC information or assets. These briefings shall include:

- the access requirements of their position or contract;
- their authorized screening level;
- their responsibilities for safeguarding sensitive CPIC information and other assets; and,
- relevant sections of other security–related legislation and regulations applicable to their duties.

2.5 Procedures shall be documented and implemented to ensure that prior to termination of an individual's employment or contract, where that person is a user of CPIC, that:

- the individual is debriefed on continuing security responsibilities;
- access privileges to CPIC, restricted zones and CPIC–related IT facilities are revoked; and,
- all sensitive security–related items (keys, documents, etc.) issued to the individual are retrieved.

3. IT Security and Physical/Environmental Security

3.1 CPIC–related computers and printers shall be located where their operation is restricted to authorized personnel.

3.2 CPIC–related computer monitors and printers used for CPIC purposes shall be positioned to prevent observation by unauthorized persons.

3.3 Computer keys shall be used wherever possible to restrict unauthorized access.

3.4 CPIC printed output shall be marked "Protected B" on the top right of the face (cover) sheet, stored in approved containers, and, when no longer required, destroyed in an approved manner, using equipment listed in the RCMP Security Equipment Guide, SSB/SG–20.

3.5 CPIC removable media, shall be marked "CPIC – Protected B" in plain language and in eye–readable form. The colour blue may be used to assist in denoting the security designation of CPIC removable media.

3.6 While awaiting destruction or in transit to destruction, CPIC–related electronic media shall:

- be safeguarded according to the highest sensitivity of the information; and,
- be kept separate from non–sensitive media.

3.7 The transport and transmittal of sensitive CPIC–related electronic media shall conform with the Standard for the Transport and Transmittal of Sensitive Information and Assets, RCMP Standard SSB/SG–30.

3.8 Each office shall develop and document evacuation procedures, and test them periodically, to ensure personnel safety while maintaining the security of CPIC–related information and assets during and following evacuation. These procedures shall include:

- circumstances under which evacuation is to be implemented;
- a list of facilities or restricted zones subject to these procedures;
- names and specific security duties of personnel delegated responsibilities during evacuation; and,
- the specific CPIC shut–down processes which shall take place.

3.9 CPIC–related computers shall be labeled with approved CPIC warning stickers.

4. IT Security: Hardware Security

4.1 Contracts shall specify the security requirements which apply to CPIC–related hardware and related services controlled by a contractor such as:

- release of information on need–to–know principle; and,

- protection of media, including disposal techniques and procedures for maintenance, and problem resolution.

4.2 Computers used for connecting to CPIC shall not be additionally used for processing Protected C or Classified (i.e. Confidential, Secret or Top Secret) information.

4.3 All CPIC–unauthorized persons such as outside maintenance and service persons, shall, when servicing CPIC–related systems on–site, be properly identified, authenticated, escorted and supervised by an authorized CPIC user responsible to the Department with enough background, training or qualifications to understand the risks associated with the work being done and provide assurance that CPIC data is not being accessed, viewed or copied.

4.4 Computers shall not be logged into CPIC while being serviced by CPIC–unauthorized persons.

4.5 A maintenance contractor may test, diagnose and (if not a confirmed mechanical failure) perform a low–level format and partitioning of a hard disk.

4.6 Due to the security vulnerabilities associated with hard disk caching by workstation computer operating systems, CPIC–related media shall be sanitized according to the requirements of RCMP TSSIT, Appendix OPS–II, and the process verified as having been effective, before they are re–issued into (1) the CIC work environment for other purposes, (2) the Industry Canada schools program, or (3) Crown Assets Disposal.

4.7 Where CPIC–related media cannot be sanitized according to the standards, such as in situations of hard disk failure, the media shall not be returned to the vendor for repair or replacement, even if under warranty. Instead, the media shall be sent either to National Archives or to the CIC IT security coordinator for destruction, according to the care and transport security requirements within TSSIT. In no circumstance shall the media be released to any other organization outside CIC, given that it is likely the media also has other sensitive CIC information on it.

4.8 Remote diagnostic access to workstation computers used for CPIC–related purposes is prohibited.

4.9 No modem shall be connected to any workstation computer which is used for CPIC purposes.

4.10 Records of all hardware maintenance activity shall be retained for a minimum of one year.

4.11 Hardware problems affecting security shall be immediately reported to the technology administrator and/or local IT security officer.

5. IT Security: Software Security

5.1 Each office computer having logical connection to CPIC services, shall have installed a properly licensed password controlled screensaver, such as the one provided in Microsoft Windows™.

5.2 No user shall share a computer password, PIN, PassKey or other computer identification or authentication element with another person, for any reason.

5.3 Users shall not write their passwords down unless they are sealed in an envelope and physically protected in a lockable cabinet controlled only by the user.

5.4 Users shall not "copy and paste" CPIC data from the CPIC application into another.

5.5 Computers used for CPIC access shall be configured at the network operating system layer, to auto–logoff after a maximum of one–half hour of inactivity, wherever practicable.

5.6 Users shall change their password immediately upon discovery that it has been compromised.

5.7 Users shall logout prior to leaving the work area unattended.

5.8 Access to CPIC shall not be granted until the authorized CPIC user's identity has been authenticated.

6. IT Security: Communications Security

6.1 All CPIC–unauthorized personnel such as maintenance and service personnel, shall, when servicing electronic communications systems on–site which carry CPIC–related information, be properly escorted and supervised by an authorized CPIC user responsible to the department with enough background, training or qualifications to understand the risks associated with the work being done.

Acknowledgment and Confirmation of Management's Responsibilities Respecting the Security of Sites Accessing the Canadian Police Information Centre (CPIC)

1. I understand that, with the establishment of a computer link between the police community's database – the Canadian Police Information Centre (CPIC) and that of Citizenship and Immigration Canada (CIC) – Field Operations Support System (FOSS), approved CIC personnel across Canada will be gaining access to the CPIC system via FOSS.
2. I have read and understand my obligations and responsibilities, as described in the two documents provided, entitled "Security Imperatives for CIC Users Accessing the Canadian Police Information Centre (CPIC)" and "Information Technology Security Operational Policies for CIC Offices Accessing the Canadian Police Information Centre (CPIC)".
3. I acknowledge that I am responsible for:
   - verifying that the appropriate security screening type and level has been specified for each position or contract;
   - ensuring that personnel and contractors have been security screened prior to authorizing their access to the CPIC system or CPIC–related information or other assets;
   - maintaining a current list of positions requiring access to CPIC, the screening level specified for the position, and the actual screening level granted to the person occupying the position; and,
   - understanding and implementing security policy and for eliciting staff support in properly applying good security practices, viz:
     - identify information and assets needing designation or classification as sensitive;
     - assist and support employees who show concern about deficient security;
     - plan for, implement and monitor appropriate security measures;
     - ensure that staff understand their rights and responsibilities under the Government Security Policy; and,
     - report all incidents, breaches and violations to the appropriate Security Officer.
4. I acknowledge that, in order to gain and maintain access to CPIC, I must conduct a verification of my area of jurisdiction, ensure that the office meets and will continue to meet all the requirements in the documents mentioned in paragraph 2.
5. I confirm that I have completed such a verification and that my area of jurisdiction meets all the requirements contained in the documents mentioned in paragraph 2.

_____ _____

Name (block letters) Signature

_____ _____

Title PRI # Date

Office/Division: _____

Address: _____

_____

_____

APPENDIX H
MEMORANDUM OF UNDERSTANDING (MOU) WITH CPIC SERVICES

MEMORANDUM OF UNDERSTANDING

between

CITIZENSHIP AND IMMIGRATION CANADA
ENFORCEMENT BRANCH, NATIONAL SERVICE SECTOR
(HEREINAFTER KNOWN AS THE AGENCY)

and the

CANADIAN POLICE INFORMATION CENTRE
(HEREINAFTER KNOWN AS CPIC)

a
National Police Service
of the
ROYAL CANADIAN MOUNTED POLICE

---

1. AUTHORITY

The **Canadian Police Information Centre (CPIC)** is entering into this Memorandum of Understanding in accordance with the CPIC policy governing Category II(B) agencies as contained in the CPIC Reference Manual and the authority delegated to the Officer in Charge, CPIC Services pursuant to section 5.2, R.C.M.P. Act which provides the Commissioner of the RCMP authority to delegate his powers.

2. PURPOSE AND OBJECTIVE

WHEREAS the CPIC Advisory Committee (A/C) has approved **the agency** to be a Category II(B) agency of CPIC and to have Limited Access to the CPIC system as described in the CPIC Reference Manual, this Memorandum of Understanding stipulates the conditions of the Limited Access to the CPIC system for **the agency**.

3. ORGANIZATIONAL OBLIGATIONS

1. **CPIC** shall permit on–line computer access to **the agency** to allow **narrative traffic** access through the CPIC message function and **query** access to the following CPIC files or categories specified in this Understanding and in accordance with the terms and conditions of this Understanding:
    1. standard query of the following Investigative Data Bank Files: Persons, Vehicles, Marine and Property;
    2. standard query of the Identification Data Bank;
    3. standard query of the Ancillary Data Bank files dealing with vehicle registered owner, driver licence information, wandering persons and inmate records, subject to such approvals as may be required from the appropriate access authorities;
    4. access to the CPIC communications system and ACUPIES.
    5. standard maintenance access to Persons, Vehicles, Marine and Property files of the CPIC Investigative Data Bank in accordance with present CPIC policy (e.g. "Hit" confirmation availability 24 hour per day, etc). Maintenance access is restricted to those CPIC files and categories relating to the agency's mandate.

2. **The agency** shall provide, at their expense, an on–line computer terminal for their use and be responsible for the cost of supplying communication lines to access the CPIC system. **The agency** shall be responsible for the maintenance costs of their computer hardware with the exception of damages incurred through negligence on the part of RCMP employees.
3. **The agency** understands that terminal equipment which they purchase, may not be compatible and that **the agency** is responsible for the cost of any upgrading required to make the terminal equipment compatible to the CPIC system.
4. **The agency** shall install any terminal accessing the CPIC system in a location where its operation is restricted to authorized personnel and agrees not to disconnect or relocate any terminal accessing the CPIC system without first advising the local CPIC Field Operations Section or the Officer in Charge, CPIC Services, Ottawa.
5. **CPIC** and **the agency** acknowledge the necessity to respect the privacy of individuals and **CPIC** and **the agency** shall comply with the provisions of the Privacy Act, Access to Information Act, Provincial Data Protection Legislation, and the Federal Treasury Board Guidelines as they may apply.
6. **The agency** agrees that all authorized persons having terminal access to CPIC shall undergo a criminal records check through the submission of fingerprints to the Directorate of Information and Identification Services of the RCMP. In accordance with CPIC policy, proof of the security screening shall be available, upon request, to a CPIC auditor.
7. **The agency** agrees that the computer terminal used to access the CPIC system shall be used **only in support of authorized law enforcement investigations** being undertaken in accordance with CPIC policy and within **the agency**'s legislated mandate.
8. **The agency** agrees that **CPIC access is not to be used for conducting security or reliability checks of persons.**
9. **The agency** will ensure that the **REM** keyword (Remarks) in all queries includes the name of the person causing the query to be made and the file number for which the query is being conducted. **The agency** further agrees that sufficient documentation will be placed on file to support the legitimacy of the queries conducted.
10. **The agency** agrees not to disseminate any information obtained from the CPIC Ancillary Data Bank (Motor Vehicle, Driver's Licence, Corrections Records and Wandering Persons). **The agency** agrees not to further disseminate any information obtained from any of the other CPIC data banks except where that use is consistent with the carrying out of the law enforcement duties and responsibilities of **the agency**.
11. **The agency** shall report to CPIC Services all complaints of CPIC policy violations. If the complaint is resolved by **the agency**, the results of the investigation, including corrective or disciplinary action taken, shall be reported to the OIC CPIC Services for the record and the annual report to the **CPIC Advisory Committee**. If the complaint cannot be resolved by **the agency**, the OIC CPIC Services shall have an investigation conducted.
12. **The agency** agrees to permit CPIC auditors on–site for the purpose of auditing the use of the CPIC system by **the agency** to ensure compliance with the terms of this Memorandum of Understanding, CPIC policy, and the use and dissemination of information from the CPIC system. The agency further agrees to permit the CPIC auditors access to any computer terminal accessing the CPIC system, terminal operators and relevant documentation.
13. **CPIC Services** shall, as soon as practicable, notify **the agency** of any changes to the CPIC system which will require modification to the equipment or software used to access the CPIC system.

4. LIAISON CHANNELS

1. The regular liaison channels and points of contact of the parties shall be:

   (1) Manager, Immigration Warrant Response Centre, Ottawa, Ontario
   Manager, CPIC Field Operations Section – Ontario

   (2) Manager, Enforcement, BC Regional Office, Vancouver, British Columbia
   Manager, CPIC Field Operations Section – BC/YT

   (3) Program Director, Quebec Regional Office, Montreal, Quebec
   Manager, CPIC Field Operations Section – Quebec

   (4) Director, Enforcement and Control, Ontario Regional Office, Toronto, Ontario
   Manager, CPIC Field Operations Section – Ontario

   (5) Manager, Enforcement, Prairie Regional Office, Winnipeg, Manitoba
   Manager, CPIC Field Operations Section – Man/Sask.

   (6) Manager, Enforcement, Atlantic Regional Office, Dartmouth, Nova Scotia
   Manager, CPIC Field Operations Section – Nova Scotia/PEI

2. Any dispute concerning this Memorandum of Understanding shall be resolved through consultation between the **Officer in Charge CPIC Services** of the **Canadian Police Information Centre** and the **Director General, Citizenship and Immigration Canada, Enforcement Branch, National Service Sector**. This shall be the final level for conflict resolution within each of the organizations here above described.

5. MODIFICATION OR CANCELLATION

1. This Memorandum of Understanding may be modified with the consent of both of the parties expressed in writing.
2. This Memorandum of Understanding may be terminated at any time upon ninety (90) days written notice by either of the parties.
3. Upon the termination of this understanding, **CPIC Services** shall take the necessary steps to have the communications line from **the agency** to the CPIC system discontinued and **the agency** shall return to **CPIC Services** all software provided.

6. LEGAL EFFECT

1. This Memorandum of Understanding is not entered into, nor is this Memorandum of Understanding written as a formal or legally binding agreement, but is only a definite expression and record of purpose and intention of the parties concerned to which each honourably pledge themselves.
2. Upon execution by both parties, the Memorandum of Understanding supersedes any prior oral or written statements of any kind between **the agency** and the **CANADIAN POLICE INFORMATION CENTRE**.

7. REVIEW

1. A review of the provisions of this Memorandum Of Understanding by CPIC Services shall occur at least every 2 years from the date of signing.
2. A formal evaluation of the provisions of this Memorandum Of Understanding by both parties shall occur at least every 4 years from the date of signing.

IN WITNESS WHEREOF, the agency has caused this Understanding to be duly signed at

Hull, Quebec this 16th day of October, 1995.
(city & province)

DIRECTOR GENERAL, ENFORCEMENT BRANCH, NATIONAL SERVICE SECTOR
CITIZENSHIP AND IMMIGRATION CANADA
By:

Hallam Johnston

IN WITNESS WHEREOF, the CANADIAN POLICE INFORMATION CENTRE, a National Police Service of the ROYAL CANADIAN MOUNTED POLICE, has caused this Understanding to be duly signed at Ottawa, Ontario this 2nd day of October, 1995.

RCMP - CPIC SERVICES
By:

D.G. SIMPSON, Superintendent
Officer in Charge, CPIC Services

APPENDIX I
WARRANT CONFIRMATION DUTY OFFICER

CIC:	Address:	RC CODE:

REGULAR BUSINESS HOURS:
_____ :00 to _____ :00

Telephone Numbers:

Manager: ( )

Supervisor/
Enforcement: ( )

Pager: ( )

Fax: ( )

Secure Phone: ( )

Photophone: ( )

AFTER HOURS TELEPHONE NUMBERS:

Cellular (1): ( )

Cellular (2): ( )

Pager (1): ( )

Pager (2): ( )

Manager's Cellular: ( )

Manager's Home: ( )

JURISDICTIONS (city, town, community, etc.)

Any changes on the above should be provided to IWRC for immediate update

APPENDIX J
DETENTION FACILITIES

CIC:

RC:

Name and Address:

_____

_____

Telephone Number: ( ) _____ **After Hours: ( )** _____

Fax Number: ( ) _____ ☐ Women ☐ Immigration

☐ Minimum ☐ Medium ☐ Maximum ☐ Youth

Name and Address:

_____

_____

Telephone Number: ( ) _____ **After Hours: ( )** _____

Fax Number: ( ) _____ ☐ Women ☐ Immigration

☐ Minimum ☐ Medium ☐ Maximum ☐ Youth

Name and Address:

_____

_____

Telephone Number: ( ) _____ **After Hours: ( )** _____

Fax Number: ( ) _____ ☐ Women ☐ Immigration

☐ Minimum ☐ Medium ☐ Maximum ☐ Youth

Name and Address:

_____

_____

Telephone Number: ( ) _____ **After Hours: ( )** _____

Fax Number: ( ) _____ ☐ Women ☐ Immigration

☐ Minimum ☐ Medium ☐ Maximum ☐ Youth

APPENDIX K
SECTION 3 OF THE *PRIVACY ACT*

CHAPTER P–21

An Act to extend the present laws of Canada that protect the privacy of individuals and that provide individuals with a right of access to personal information about themselves

SHORT TITLE

Short title

1. This Act may be cited as the Privacy Act. 1980–81–82–83, c. III, Sch. II "1".

PURPOSE OF ACT

Purpose

2. The purpose of this Act is to extend the present laws of Canada that protect the privacy of individuals with respect to personal information about themselves held by a government institution and that provide individuals with a right of access to that information. 1980–81–82, c. III, Sch. II "2".

INTERPRETATION

Definitions

3. In this Act,

"administrative purpose" of «fins...»

"administrative purpose", in relation to the use of personal information about an individual, means the use of that information in a decision making process that directly affects that individual;

"Court" «Cour»

"Court" means the Federal Court – Trial Division;

"designated Minister" «ministre...»

"designated Minister", in relation to any provision of this Act, means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of that provision;

"government institution" «institution...»

"government institution" means any department or ministry of state of the Government of Canada listed in the schedule or any body or office listed in the schedule;

"head" «responsable...»

"head", in respect of a government institution, means

(*a*) in the case of a department or ministry of state, the member of the Queen's Privy Council for Canada presiding over that institution, or

(*b*) in any other case, the person designated by order in council pursuant to this paragraph and for the purposes of this Act to be the head of that institution;

"personal information" «renseignements...»

"personal information" means information about an indentifiable individual that is recorded in any form including, without restricting the generality of the foregoing,

(*a*) information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual,

(*b*) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(*c*) any identifying number, symbol or other particular assigned to the individual,

(*d*) the address, fingerprints or blood type of the individual,

(*e*) the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,

(*f*) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence,

(*g*) the views or opinions of another individual about the individual,

(*h*) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual, and

(*i*) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual, but, for the purposes of sections 7, 8 and 26 and section 19 of the Access to Information Act, does not include

(*j*) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including.

(i) the fact that the individual is or was an officer or employee of the government institution,

(ii) the title, business address and telephone number of the individual,

(iii) the classification, salary range and responsibilities of the position held by the individual,

(iv) the name of the individual on a document prepared by the individual in the course of employment, and

(v) the personal opinions or views of the individual given in the course of employment,

(*k*) information about an individual who is or was performing services under contract for a government institution that relates to the services performed, including the terms of the contract, the name of the individual and the opinions or views of the individual given in the course of the performance of those services,

(*l*) information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit, and

(*m*) information about an individual who has been dead for more that twenty years;

"personal information bank" «fichier...»

"personal information bank" means a collection or grouping of personal information described in section 10;

"Privacy Commissioner" «Commissaire...»

"Privacy Commissioner" means the Commissioner appointed under section 53. 1980–81–82–83, c.III, Sch.II "3".

COLLECTION, RETENTION AND DISPOSAL OF PERSONAL INFORMATION

Collection of personal information

4. No personal information shall be collected by a government institution unless it relates directly to an operating program or activity of the institution. 1980–81–82–83, c. III, Sch. II "4".

IMMIGRATION

Canada

Chapter EC 8
Cash Deposits and Performance Bonds



Citizenship and Immigration Canada
Citoyenneté et Immigration Canada

Cash Deposits and Performance Bonds

Abbreviations and Short Forms	
Act	*Immigration Act*, as amended
CIC	Canada Immigration Centre
Commission	Canada Employment and Immigration Commission
FOSS	Field Operations Support System
IO	Immigration Officer
POE	Port of Entry
SIO	Senior Immigration Officer

1. INTRODUCTION **1**
1.1 What this chapter is about 1
1.2 Policy intent 1

2. RESPONSIBILITIES OF OFFICERS AND ADJUDICATORS **2**

3. RECOMMENDING AND REQUIRING CASH DEPOSITS AND PERFORMANCE BONDS **3**
3.1 Security under A18 3
3.2 Security under A23(3)(b), A23(3)(c), A103(3)(a), A103(3)(c), A103(3.1)(c), A103(5) and A103(7) 4
3.3 Amounts of cash deposits and performance bonds 5
3.4 Obligations of co-signers 5

4. CASH DEPOSITS **6**
4.1 Taking cash deposits 6
4.2 Altering and amending cash deposits 6

5. PERFORMANCE BONDS **8**
5.1 Legal attributes of performance bonds 8
5.2 Taking performance bonds 9
5.3 The effect of breaching terms and conditions 9
5.4 Changing the conditions of bonds 9
5.5 The effect of the person's departure from and return to Canada 10

6. WITHDRAWALS, REFUNDS AND FORFEITURES **11**
6.1 Withdrawals 11
6.2 Refunds 12
6.3 Forfeitures 12
6.4 Requests for information 13
6.5 Powers of attorney and assignments 13
6.6 Security given by a third party 13

APPENDIX A
SAMPLE OF IMM 514 (05–92) B – CASH DEPOSIT **15**

APPENDIX B
SAMPLE OF FIN 3160 – REVENUE JOURNAL **17**

APPENDIX C
SAMPLE OF IMM 60 VP–P (05–89) B – LOCAL VISITOR CONTROL **19**

APPENDIX D
SAMPLE OF IMM 709 (12–92) B – REQUISITION FOR REFUND/FORFEITURE OF CASH SECURITY DEPOSIT **21**

APPENDIX E
SAMPLE OF IMM 1416 (3–84) B – SOLEMN DECLARATION OF SOLVENCY BY BONDSPERSON **23**

APPENDIX F
SAMPLE OF IMM 1230 (01–93) B – PERFORMANCE BOND:
THE IMMIGRATION ACT 25

APPENDIX G
SAMPLE OF IMM 1259 (01–93) B – PERFORMANCE BONDS:
THE IMMIGRATION ACT (WHERE THERE ARE COSIGNERS) 27

APPENDIX H
MINIMUM TERMS AND CONDITIONS FOR ACKNOWLEDGEMENT
OF TERMS AND CONDITIONS (IMM 1262) 29

1. INTRODUCTION

1.1 What this chapter is about

This chapter describes when cash deposits or performance bonds may be required, withdrawn, forfeited, estreated and released.

1.2 Policy intent

Canadian immigration policy aims for using cash deposits and performance bonds are:

- to ensure that visitors to Canada comply with any terms and conditions that may be imposed on them under the *Immigration Act* and its regulations, within the context of the *Canadian Charter of Rights and Freedoms*, and
- to allow the release of a person in immigration detention on the person's agreement to abide by whatever terms and conditions of release are necessary to ensure compliance with the *Immigration Act* and its regulations.

2. RESPONSIBILITIES OF OFFICERS AND ADJUDICATORS

An **immigration officer** (IO) may recommend to a senior immigration officer (SIO) that a visitor to Canada provide a cash deposit or a performance bond to ensure that the visitor complies with any terms and conditions imposed on the person [*Immigration Regulations*, s. 23(3)].

An **SIO**, acting alone or on the recommendation of an IO, has the authority to require a cash deposit or a performance bond when the officer has serious doubts as to whether the person will comply with the Act [A18(1)]. An SIO may also use a cash deposit or a performance bond to allow a person to be released from detention pending a continuation of examination, pending inquiry [A23(3)] or pending removal [A103(3.1)].

> *Note: References to the Immigration Act, as amended, appear in the text in this chapter with an "A" prefix followed by the section number, as here: the Act, subsections 18(1) and 23(3).*

An SIO inland may extend the duration of a cash deposit or performance bond taken at a port of entry (POE): for example, a bond which guarantees that a visitor will comply with the terms and conditions outlined on a visitor record (form IMM 1097).

A **case presenting officer** may recommend to an adjudicator that a person in detention provide a cash deposit or performance bond, or any combination thereof, to allow the release of the person on his or her agreement to abide by whatever terms and conditions of release are necessary to ensure compliance with the Act.

An **adjudicator** at an inquiry or a detention review can require a cash deposit, a performance bond or both [A103(3), A103(7)].

3. RECOMMENDING AND REQUIRING CASH DEPOSITS AND PERFORMANCE BONDS

The Act refers to a "sum of money or other security" [A18(1)], and "the payment of a security deposit or the posting of a performance bond" [A23(3), A103(3)].

A cash deposit or performance bond is a security within the meaning of A18.

3.1 Security under A18

An IO at a POE has the discretion to recommend to an SIO that a visitor or group of visitors seeking to come into Canada be required to provide security to guarantee compliance with any terms and conditions that may be imposed under the Act [A18].

The IO should consider security when a person is otherwise admissible to Canada but the officer has serious doubts as to whether the person will comply with the Act: for example, by taking unauthorized employment, by becoming a student while in Canada, or by failing to leave Canada when required to do so. In such cases, where the person has friends or relatives in Canada (who are Canadian citizens or permanent residents) prepared to post a cash deposit or a performance bond, security should always be considered.

A performance bond in lieu of cash is acceptable when the third party posting the bond (the co-signer or bondsperson) can satisfy an SIO that he or she has the means to pay the amount of the bond in the event of default. A visa officer at a visa office abroad cannot take security under A18 as a condition of issuing a Canadian visa. If a visa officer has issued a visa and is aware of circumstances that in themselves were not sufficient to warrant refusal of a visa, but that may be of interest to the examining officer at the POE, the visa officer may alert the POE by telex. The fact that a visa officer has issued a visa does not preclude an IO from exercising discretion to recommend security as a term or condition of admission if the IO believes that security is required.

An IO cannot use security deposits and bonds to cure an obvious inadmissibility to Canada. An IO who determines that an inadmissibility exists must write an A20(1) report in the usual manner.

A person who cannot or will not comply with a requirement for security under A18 may be reportable under A19(1)(h) or possibly A19(2)(d) for A18(1). If the person is reportable under A19(2)(d) for A18(1), he or she may make the required cash deposit or arrange the posting of a performance bond before inquiry. In such a case it may be appropriate for the request for inquiry to be withdrawn and for entry to be granted.

Security could take a form other than a deposit of cash [A18(1)]. Immigration policy is to accept only an amount of cash as security, because the value of non-cash security may be difficult to establish and to convert into money if the person defaults.

3.2 Security under A23(3)(b), A23(3)(c), A103(3)(a), A103(3)(c), A103(3.1)(c), A103(5) and A103(7)

If an SIO adjourns the examination of a person subject to an A20(1) report, or does not let the person come into Canada under A22 and does not grant admission or otherwise authorize the person to come into Canada, it may be appropriate for the SIO to require security in the form of a cash deposit, a performance bond, or a combination of the two as a term or condition of release from detention [A23(3)(b)].

An SIO can also require that a person provide a cash deposit or performance bond in appropriate circumstances where detention or release is not a factor [A23(3)(c)].

The provisions of the Act dealing with release from detention and release on terms and conditions are intended to reflect the overall requirement of the *Canadian Charter of Rights and Freedoms* that persons not be deprived of personal liberty except in accordance with the principles of fundamental justice. The Act provides that a person may not be arrested or detained, or if arrested, must be released, unless there are reasonable grounds to believe that the person presents a danger to the public or would not otherwise appear for examination, inquiry, determination by an SIO or removal.

If an inquiry is to be held or continued, or a removal order or conditional removal order has been made against a person, an adjudicator can require that the person make a cash deposit or post a performance bond as a term or condition of release from detention [A103(3)(a)], or in any event, impose such terms and conditions as the adjudicator deems appropriate in the circumstances, including the payment of a security deposit or the posting of a performance bond. For example, an adjudicator may impose terms and conditions at the conclusion of or at the point of adjournment of an inquiry where the person reported voluntarily for inquiry and security was not previously required [A103(3)(c)].

If an exclusion order, departure order or conditional departure order has been made by an SIO against a person, an SIO can require a cash deposit or performance bond as a condition of release from detention [A103(3.1)]. In any event, an SIO can impose such terms and conditions as the SIO deems appropriate in the circumstances, including the payment of a security deposit or the posting of a performance bond [A103(3.1)(c)]. For instance, an SIO at an inland office may require security after the person has reported voluntarily and has been given an administrative removal order.

An SIO may require a cash deposit or performance bond as a condition of release from detention at a release hearing held within 48 hours of initial detention [A103(5)].

An adjudicator at a detention review held after the initial 48-hour period of detention may require a cash deposit or performance bond as a condition of release, if the person in detention is not likely to pose a danger to the public and is likely to appear for an examination, inquiry or for removal [A103(7)].

3.3 Amounts of cash deposits and performance bonds

The aggregate value of a cash deposit or bond must reflect the policy goals enunciated in EC 8, section 1.2. Security should not be prohibitive or excessive but must reflect in each case, the officer's assessment of the degree of risk that a breach of terms and conditions may incur.

The amounts required must:

a) reflect the officers' reasonable assessment of the degree of risk that the individual will not comply with the terms and conditions imposed;

b) be sufficient to impress upon the person concerned (and the bondsperson) the importance of complying with the terms and conditions attached to the security;

c) be sufficient to provide a meaningful penalty for breach;

d) take into account the future costs which may be incurred to locate the person, arrest him or her, hold an inquiry and remove the person from Canada; and

e) consider the future cost that may be incurred by the Government of Canada to realize security given in the form of a performance bond.

An officer should not consider cash bonds or combined cash and co–signed performance bonds in an amount less than $4,000.00.

Performance bonds used alone should generally reflect a correspondingly higher value, based on the officer's assessment of the collateral available for satisfaction of the amount of the bond in the event of default.

In every case, the department's policy requires that bonds be accepted or recommended in declining order of preference as follows:

a) cash bond alone

b) cash bond combined with co–signed performance bond

c) co–signed performance bond

d) performance bond alone.

3.4 Obligations of co-signers

The essential obligation of the co-signer of a performance bond posted under the Act is to ensure compliance with any terms and conditions imposed. The most important condition that may be imposed is that the person concerned must appear as required from time to time.

The Act provides for forfeiture of the entire amount of a cash deposit or performance bond if the person concerned breaches one or more of the terms and conditions attached to the cash deposit or bond. It is important that a person agreeing to co-sign a performance bond understands the significance of the undertaking given, the responsibilities involved and the consequences of breach of the terms and conditions by the subject of the deposit or bond.

4. CASH DEPOSITS

A cash deposit is a sum of money deposited to ensure compliance with terms and conditions imposed under the Act, and may be provided either by the person who is to be the subject of terms and conditions, or by a third party.

A deposit is refundable when the terms and conditions imposed are either revoked or met. If the person breaches the terms and conditions, the cash deposit may be forfeited to the Receiver General for Canada.

Each office should have a system whereby cash deposits are reviewed for appropriate action at the conclusion of a case. A bring-forward system for case files should be in place to ensure that officers review outstanding cash deposits for refund or forfeiture action before the file is sent to archives.

4.1 Taking cash deposits

To take a cash deposit, an officer should:

a) complete a Cash Deposit form (IMM 514; see APPENDIX A) in full. Enter the complete and exact name of the depositor so that a refund can be issued properly.

b) prepare a Revenue Journal form (FIN 3160; see APPENDIX B).

c) forward copy 1 of the FIN 3160 and copy 2 of the IMM 514 to the Chief, Revenue Accounting at National Headquarters. If the cash deposit is being taken from a group of 15 or more performing artists and staff, who are exempt from the requirements of s. 18 of the *Immigration Regulations* by virtue of s. 19(1)(d) of the *Immigration Regulations*, send a copy of a completed Local Visitor Control form (IMM 60; see APPENDIX C) with copy 2 of the IMM 514.

d) provide the individual or group depositor with a receipt or other documentary record specifying the circumstances in which the deposit may be forfeited [*Immigration Regulations*, s. 25(2)].

e) if a condition of the cash deposit is that the person leaves Canada on or before a certain date, advise the person to report to an IO at the port of departure so that the IO can confirm departure. Failure to confirm departure will result in forfeiture or serious delay in refunding the deposit.

f) in the case of Senior Immigration Officers (SIOs), require the subject of the proposed cash bond to execute a written Acknowledgement of Terms and Conditions, (IMM 1262) containing as a minimum, the terms and conditions found in APPENDIX H;

g) in the case of Case Presenting Officers (CPOs), submit to the Adjudicator that, as minimum conditions of release, the terms and conditions found in APPENDIX H should be imposed;

h) provide file notes indicating in detail, the reasons for concluding that a cash bond or combination cash/performance bond is appropriate.

4.2 Altering and amending cash deposits

A cash deposit must not be altered or amended without the consent of all parties involved, including the SIO, if the bond was required by an SIO, or an adjudicator, if the bond was imposed by an adjudicator.

A person may be released on a cash deposit and then circumstances warrant taking another deposit or completing a new Cash Deposit form.

In the case of a cash deposit required under A18(1), an SIO inland may, at the request of the person concerned and the bondsperson, amend the terms and conditions of the deposit: for instance, by extending the departure date. A bondsperson must post a new deposit at that time, and if the person who is the subject of the security fails to depart Canada by the extended date, the bondsperson would have to forfeit the amount of the deposit to the Receiver General for Canada. The POE must be advised in the event of the extension, the replacement or the refund of any deposit required under A18(1).

If circumstances warrant increasing the amount of the cash deposit, an additional cash deposit may be required.

If circumstances require the changing of the wording of the conditions of the cash deposit but not the amount, on a new IMM 514 complete the line *Replaces previous cash security deposit no....for the same amount* instead of acknowledging receipt of the cash deposit.

If a reduction in the amount of the cash deposit is in order, take a smaller cash deposit from the person by requesting a partial refund of the original deposit as follows:

a) on an IMM 514 form, complete the line *Replaces previous cash security deposit no....in the amount of...* instead of acknowledging receipt of the cash deposit

b) complete box 3 of a Requisition for Refund/Forfeiture of Cash Security Deposit form (IMM 709; see APPENDIX D)

c) complete the *Remarks* section of the IMM 709 with any necessary clarification, and

d) forward the completed IMM 514 and IMM 709 forms to the Chief, Revenue Accounting at National Headquarters. Send original copies, not photocopies.

Unilateral alteration of a cash deposit is a breach of the contract entered into by the parties concerned.

5. PERFORMANCE BONDS

A performance bond is a written guarantee by a third party that the person who is the subject of the bond will comply with the terms and conditions imposed on him or her. For immigration purposes, a performance bond is a promise to pay a sum of money if the person defaults.

Failure of the person who is the subject of the bond to fulfil the terms and conditions constitutes default, and may make the third party who posted the bond liable to pay the amount of the bond. A performance bond is revoked when the terms and conditions for which the bond was posted are met.

Performance bonds are also known as conditional bonds, because the third party posting the bond is not required to provide the cash amount of the bond unless the person who is the subject of the bond does not respect the terms and conditions of the bond.

5.1 Legal attributes of performance bonds

A performance bond is a legal contract between immigration authorities and a third party concerning the conduct of another person. A performance bond is in fact a guarantee. The person posting a performance bond provides a legally enforceable guarantee that the person who is the subject of the bond will abide by certain terms and conditions imposed by an SIO or an adjudicator. The bond requires the same legal attributes as any other contract.

A performance bond cannot be enforced unless its terms are both certain and complete. Vague terms or terms that require further agreement at some time in the future may render the performance bond unenforceable.

A consensus between the parties to the performance bond must exist. There must be both an offer by a person to guarantee certain terms and conditions by the posting of a bond for a certain amount, and acceptance of that offer by immigration authorities.

The parties to a performance bond must have legal capacity. A person posting a performance bond must be of legal age to enter into a contract in the jurisdiction where the bond is given, and must not suffer from a mental disability.

An SIO must closely examine a potential co-signer of a performance bond to determine:

a) if the proposed bondsperson is a Canadian citizen or a permanent resident; it is departmental policy not to entertain bonds from non-residents because it may be impossible to estreat a bond from a person with no permanent attachment to Canada

b) if the proposed bondsperson is a co-signer for other outstanding performance bonds

c) if the proposed bondsperson is financially capable of meeting the obligation of the bond should the person concerned not meet the terms and conditions imposed (that is, whether the bondsperson has liquid assets available), and

d) if the proposed bondsperson will be able to exercise control and influence over the actions of the person concerned. For instance, if the proposed bondsperson had harboured the person concerned when that person was illegally in Canada or had knowledge that the person was illegally in Canada, he or she may not be a suitable bondsperson.

5.2 Taking performance bonds

To take a performance bond, an officer should:

a) complete a Solemn Declaration of Solvency by Bondsperson (form IMM 1416; see APPENDIX E), where appropriate, and

b) complete a Performance Bond: The *Immigration Act* form (IMM 1230; see APPENDIX F), or a Performance Bond: The *Immigration Act* (Where There Are Co-signers) form (IMM 1259; see APPENDIX G) if a co-signer is required.

c) in the case of SIOs, require the subject of the proposed performance bond execute a written Acknowledgement of Terms and Conditions, (IMM 1262) containing as a minimum, the terms and conditions found in APPENDIX H;

d) in the case of CPOs, submit to the Adjudicator that, as minimum conditions of release, the terms and conditions found in APPENDIX H should be imposed;

e) provide file notes indicating in detail, the reasons for concluding that a performance bond or combined performance/cash bond is appropriate.

Until the Field Operations Support System (FOSS) is amended to allow full-document entry of bonds, regions should number all performance bonds sequentially and log them for follow-up. Sequential numbering will help in tracking and following up bonds.

5.3 The effect of breaching terms and conditions

If the person who is the subject of a performance bond breaches any or all of the terms and conditions guaranteed by the bond, the Canadian government can enforce the bond by requiring that the amount of the bond be paid. For example, if by co-signing a bond a bondsperson guarantees that a visitor will leave Canada by a certain date, the bondsperson will be relieved of the obligation of the bond when the person departs Canada as agreed. If the person does not depart Canada as agreed, the bondsperson may have to pay the amount of the bond to the Receiver General for Canada.

5.4 Changing the conditions of bonds

The terms and conditions of a performance bond cannot be altered without the consent of all parties to the agreement. *If terms and conditions are to be changed, they must be changed by an SIO, if the bond was required by an SIO, or by an adjudicator, if the bond was imposed by an adjudicator.* A unilateral attempt to alter the terms and conditions upon which a bond was posted by making an addition or deletion will render the bond void and of no effect.

When a person is released from detention under bond solely to appear for the *opening* of an inquiry, the bond becomes void when the person appears and the inquiry commences. Thus the co-signer would have to appear at

the inquiry and be prepared to co-sign a new bond should an adjudicator require the posting of a bond. To avoid the necessity of having the co-signer of the bond appear at the inquiry, the terms and conditions of the bond should require that the person concerned appear when requested during the entire inquiry and removal process. The need for new or subsequent bonds can be avoided by using the appropriate wording when the bond is first required. To continue the bond throughout the course of the inquiry and removal process, use wording such as:

> to appear at the time and place required for the purpose of scheduling an inquiry under the Immigration Act, for inquiry and at each subsequent sitting of such inquiry, for removal, or whenever required by an immigration officer.

Each party to the bond knows the terms of the bond at the time of its execution: namely, that the person concerned is required to appear whenever directed by an adjudicator or an IO. This clause is enforceable, even though the co-signer does not know the times and places of appearance at the time the bond is executed.

5.5 The effect of the person's departure from and return to Canada

The courts have found that an immigration inquiry is not terminated by the departure and return of the subject of the inquiry from Canada [*Ravinder Kaur v. Minister of Employment and Immigration,* FCA, Doc. No. A-295-84, September 25, 1984 and *Harnek Singh Grewal v. Minister of Employment and Immigration,* FCA, Doc. No. A-42-80, May 7, 1980].

It could be argued that in this circumstance, a cash deposit or performance bond would continue to be valid, if the person who is the subject of the deposit or bond has not violated any of the previously imposed terms and conditions, and if the co-signer, if any, did not take the position that the guarantee of performance given when the bond was executed had been voided by the departure of the person from Canada. On the other hand, depending on the terms and conditions imposed when the bond was executed, the person's departure from Canada may violate a term or condition and the bondsperson might have to pay the amount of the bond to the Receiver General for Canada.

If the subject of an inquiry leaves Canada and then seeks to return to Canada for the continuation of an immigration inquiry, the IO at the POE should examine the person in accordance with the request made *at the time entry is requested.* A new report and, if necessary, a new bond, may be required.

6. WITHDRAWALS, REFUNDS AND FORFEITURES

The signatory of a security deposit has entered into a serious obligation to ensure that the person concerned complies with any terms or conditions imposed. The Act provides for the enforcement of the full amount of the forfeiture when the person breaches the conditions of a security deposit, despite the existence of mitigating circumstances. The person signing a security deposit must understand the importance of his or her undertaking, and the responsibilities and the consequences should the person concerned not meet any of the terms and conditions imposed.

Sections 18 and 104 of the Act both state that where a person fails to comply with any of the terms and conditions that were imposed, a security deposit *may* be declared forfeited or a performance bond *may* be enforced. This discretionary authority, which has been delegated in Instruments I-12 and I-25 (see chapter IL 3), was included in the Act to allow for those situations where, in the judgement of the authorized officer:

a) the conditions of the security deposit were violated through no fault of the individual (for example, the person failed to report because of illness), or

b) extenuating humanitarian considerations exist.

A performance bond should not be estreated or a cash deposit forfeited when:

a) a subsequent decision is made to deal with the person favourably (for example, the person was to leave by a specified date but has been processed and landed)

b) the person is required to report or leave on a certain date but is incarcerated and unable to comply

c) the person leaves Canada within a few days of the date stipulated in his or her security deposit

d) the person's departure has not been confirmed but indications are that he or she has left Canada; no action should be taken to forfeit the deposit until the person has been allowed a reasonable period of time to prove his or her departure, or

e) the Immigration Appeals Division of the Immigration and Refugee Board allows an appeal or quashes a removal order.

6.1 Withdrawals

A bondsperson, a co-signer of a performance bond or a person who undertook to give a cash deposit may request to be released from the obligation of the cash deposit or performance bond. Although nothing in law prevents the release of a person who has signed a bond, a bondsperson or guarantor cannot be relieved of his or her obligation by merely stating the desire to be relieved, or by merely requesting it. He or she must apply to an SIO, if an SIO imposed the bond, or to an adjudicator, if an adjudicator imposed the bond.

If the bond is to be rescinded or cancelled, an appropriate person must enter into a substitute bond or the subject of the bond must be delivered into custody. The onus to produce the subject of a bond is always on the bondsperson. Immigration officials will not locate and arrest the subject of a bond so that a bondsperson may be relieved of the obligation of the bond.

6.2 Refunds

When the person who is the subject of a bond or deposit has complied with the terms and conditions for which a cash deposit or performance bond was required, the immigration officials must cancel the bond or return any monies held in the Consolidated Revenue Fund to the depositor. Although the Act does not provide specific authority for refunding cash deposits, s. 14 of the *Financial Administration Act* and the *Regulations Re: Payment of Money Received* provide the necessary authority to return funds held on deposit.

When it is determined that a person has complied with the conditions established in the cash deposit (IMM 514), an authorized officer must complete a Requisition for Refund/Forfeiture form (IMM 709) and forward it for refund action to the Chief, Revenue Accounting at National Headquarters.

6.3 Forfeitures

If the person concerned breaches a term or condition, the Act provides that a cash deposit may be declared forfeit and a performance bond may be enforced.

Instrument I-12 provides the delegated discretionary authority for:

- the forfeiture of cash deposits
- the realization of performance bonds required by an adjudicator or an SIO, and
- a person's release from detention under any provision of the Act.

Instrument I-25 contains a similar delegation for forfeiture of cash deposits and realization of performance bonds taken under A18(2).

Delegated officers deciding whether to proceed with forfeiture of a deposit or enforcement of a bond should consider each case on its merits.

The fact that a person has made a claim to be a Convention refugee in Canada has no bearing on a decision to declare a cash bond forfeit or to enforce a performance bond.

The existence of a cash deposit or performance bond is not a determining factor in deciding whether or not a person should be allowed to withdraw voluntarily at a POE or to leave Canada. If an officer allows the person to withdraw voluntarily or to leave Canada, the normal course would be to refund the cash deposit or to refrain from taking action on the performance bond.

If a person who is the subject of a cash deposit or performance bond has breached a term or condition, the SIO processing the deposit or bond should review the circumstances of the breach, and recommend to the manager of the CIC that the cash deposit be forfeited or action taken to realize the performance bond.

Persons must be given an opportunity to make submissions on why the cash deposit should not be forfeited or the performance bond should not be estreated.

On receiving an SIO's recommendation for forfeiture or realization, the CIC manager must:

- review the circumstances of the case
- for a cash deposit, complete a Requisition for Refund/Forfeiture form (IMM 709) and forward it to Revenue Accounting at National Headquarters

- for a performance bond, initiate the necessary regional action to realize the bond
- inform the SIO of the decision, and
- notify the person concerned, in writing, of the reason that action is being taken to forfeit the cash deposit or realize the performance bond.

New information may become available to cause an SIO to recommend that the deposit be refunded, rather than forfeited, after the forfeiture has been processed by a CIC manager. In this circumstance the CIC manager must repeat the steps outlined above, detailing the reason for the reversal in the *Remarks* section of IMM 709.

6.4 Requests for information

Do not refer requests for information about forfeiture or refunds directly to Revenue Accounting at National Headquarters. A local office may contact Revenue Accounting on behalf of a client (tel.: 819-994-3060).

6.5 Powers of attorney and assignments

A person entitled to request a refund of a cash deposit may sometimes give a power of attorney to another person to act on the requester's behalf, and a bondsperson may execute an assignment of bond by transferring any interest held in the bond to another person. The evidence of a power of attorney or an assignment of a bond is a written document under seal. The original copy of the document, not a photocopy, must be forwarded to Revenue Accounting before a cash deposit can be reimbursed to an attorney or an assignee.

6.6 Security given by a third party

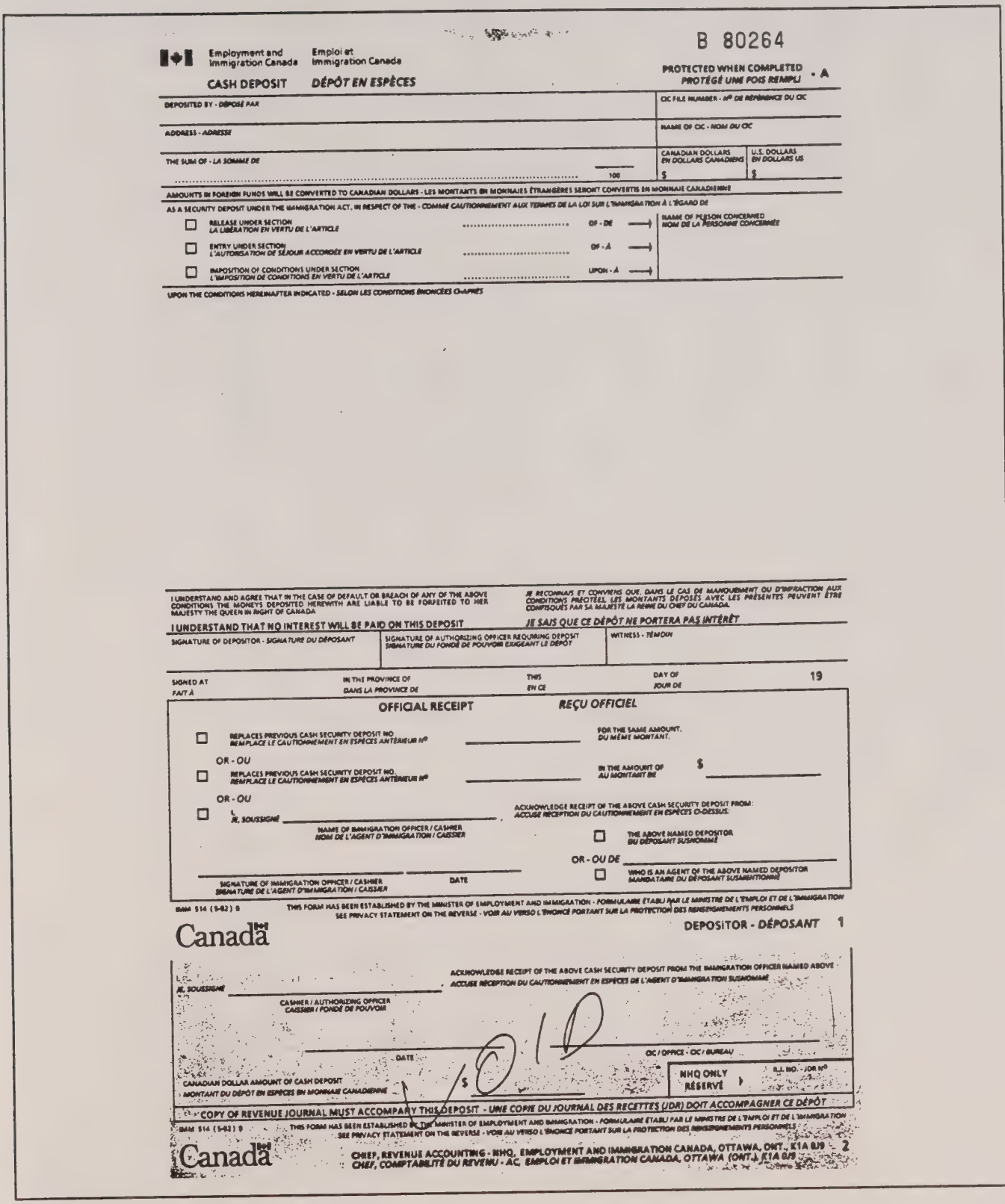
The rules of procedural fairness require that an officer should not recommend forfeiture of a cash deposit or realize a performance bond executed by a third party unless the third party is given an opportunity to make a written representation concerning the decision to be made.

When a breach of terms and conditions occurs that might result in forfeiture of a cash deposit or action to realize on a performance bond, the depositor or bondsperson must be informed in writing of the breach and the possibility of forfeiture or enforcement, and must be granted an opportunity for written representations.

The CIC manager will determine whether it is appropriate to settle for an amount less than that originally stipulated in a performance bond on a case-by-case basis, according to regional guidelines.

When the bondsperson refuses or is unable to honour a commitment in a performance bond, or any reduced commitment that might be negotiated, refer the matter to the Justice Department regional office for civil prosecution.

APPENDIX A
SAMPLE OF IMM 514 (05–92) B – CASH DEPOSIT



B 80264

Employment and Immigration Canada / Emploi et Immigration Canada

CASH DEPOSIT / DÉPÔT EN ESPÈCES

PROTECTED WHEN COMPLETED / PROTÉGÉ UNE FOIS REMPLI • A

DEPOSITED BY - DÉPOSÉ PAR

CIC FILE NUMBER - Nº DE RÉFÉRENCE DU CIC

ADDRESS - ADRESSE

NAME OF CIC - NOM DU CIC

THE SUM OF - LA SOMME DE 100

CANADIAN DOLLARS / EN DOLLARS CANADIENS $

U.S. DOLLARS / EN DOLLARS US $

AMOUNTS IN FOREIGN FUNDS WILL BE CONVERTED TO CANADIAN DOLLARS - LES MONTANTS EN MONNAIES ÉTRANGÈRES SERONT CONVERTIS EN MONNAIE CANADIENNE

AS A SECURITY DEPOSIT UNDER THE IMMIGRATION ACT, IN RESPECT OF THE - COMME CAUTIONNEMENT AUX TERMES DE LA LOI SUR L'IMMIGRATION À L'ÉGARD DE

☐ RELEASE UNDER SECTION / LA LIBÉRATION EN VERTU DE L'ARTICLE ..... OF - DE →

☐ ENTRY UNDER SECTION / L'AUTORISATION DE SÉJOUR ACCORDÉE EN VERTU DE L'ARTICLE ..... OF - À →

☐ IMPOSITION OF CONDITIONS UNDER SECTION / L'IMPOSITION DE CONDITIONS EN VERTU DE L'ARTICLE ..... UPON - À →

NAME OF PERSON CONCERNED / NOM DE LA PERSONNE CONCERNÉE

UPON THE CONDITIONS HEREINAFTER INDICATED - SELON LES CONDITIONS ÉNONCÉES CI-APRÈS

I UNDERSTAND AND AGREE THAT IN THE CASE OF DEFAULT OR BREACH OF ANY OF THE ABOVE CONDITIONS THE MONEYS DEPOSITED HEREWITH ARE LIABLE TO BE FORFEITED TO HER MAJESTY THE QUEEN IN RIGHT OF CANADA

JE RECONNAIS ET CONVIENS QUE, DANS LE CAS DE MANQUEMENT OU D'INFRACTION AUX CONDITIONS PRÉCITÉES, LES MONTANTS DÉPOSÉS AVEC LES PRÉSENTES PEUVENT ÊTRE CONFISQUÉS PAR SA MAJESTÉ LA REINE DU CHEF DU CANADA.

I UNDERSTAND THAT NO INTEREST WILL BE PAID ON THIS DEPOSIT

JE SAIS QUE CE DÉPÔT NE PORTERA PAS INTÉRÊT

SIGNATURE OF DEPOSITOR - SIGNATURE DU DÉPOSANT

SIGNATURE OF AUTHORIZING OFFICER REQUIRING DEPOSIT / SIGNATURE DU FONDÉ DE POUVOIR EXIGEANT LE DÉPÔT

WITNESS - TÉMOIN

SIGNED AT / FAIT À — IN THE PROVINCE OF / DANS LA PROVINCE DE — THIS / EN CE — DAY OF / JOUR DE — 19

OFFICIAL RECEIPT / REÇU OFFICIEL

☐ REPLACES PREVIOUS CASH SECURITY DEPOSIT NO. / REMPLACE LE CAUTIONNEMENT EN ESPÈCES ANTÉRIEUR Nº _____ FOR THE SAME AMOUNT. / DU MÊME MONTANT.

OR - OU

☐ REPLACES PREVIOUS CASH SECURITY DEPOSIT NO. / REMPLACE LE CAUTIONNEMENT EN ESPÈCES ANTÉRIEUR Nº _____ IN THE AMOUNT OF / AU MONTANT DE $ _____

OR - OU

☐ I, / JE, SOUSSIGNÉ _____ NAME OF IMMIGRATION OFFICER / CASHIER / NOM DE L'AGENT D'IMMIGRATION / CAISSIER

ACKNOWLEDGE RECEIPT OF THE ABOVE CASH SECURITY DEPOSIT FROM: / ACCUSE RÉCEPTION DU CAUTIONNEMENT EN ESPÈCES CI-DESSUS:

☐ THE ABOVE NAMED DEPOSITOR / DU DÉPOSANT SUSNOMMÉ

OR - OU DE _____

☐ WHO IS AN AGENT OF THE ABOVE NAMED DEPOSITOR / MANDATAIRE DU DÉPOSANT SUSMENTIONNÉ

SIGNATURE OF IMMIGRATION OFFICER / CASHIER / SIGNATURE DE L'AGENT D'IMMIGRATION / CAISSIER — DATE

IMM 514 (5-92) B — THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION - FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION
SEE PRIVACY STATEMENT ON THE REVERSE - VOIR AU VERSO L'ÉNONCÉ PORTANT SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS

Canada

DEPOSITOR - DÉPOSANT 1

ACKNOWLEDGE RECEIPT OF THE ABOVE CASH SECURITY DEPOSIT FROM THE IMMIGRATION OFFICER NAMED ABOVE - ACCUSE RÉCEPTION DU CAUTIONNEMENT EN ESPÈCES DE L'AGENT D'IMMIGRATION SUSNOMMÉ

I, / JE, SOUSSIGNÉ _____ CASHIER / AUTHORIZING OFFICER / CAISSIER / FONDÉ DE POUVOIR

DATE

CIC / OFFICE - CIC / BUREAU

CANADIAN DOLLAR AMOUNT OF CASH DEPOSIT / MONTANT DU DÉPÔT EN ESPÈCES EN MONNAIE CANADIENNE $ 10 10

NHQ ONLY / RÉSERVÉ — R.I. NO. - JOR Nº

COPY OF REVENUE JOURNAL MUST ACCOMPANY THIS DEPOSIT - UNE COPIE DU JOURNAL DES RECETTES (JDR) DOIT ACCOMPAGNER CE DÉPÔT

IMM 514 (5-92) B — THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION - FORMULAIRE ÉTABLI PAR LE MINISTRE DE L'EMPLOI ET DE L'IMMIGRATION
SEE PRIVACY STATEMENT ON THE REVERSE - VOIR AU VERSO L'ÉNONCÉ PORTANT SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS

Canada

CHIEF, REVENUE ACCOUNTING - NHQ, EMPLOYMENT AND IMMIGRATION CANADA, OTTAWA, ONT., K1A 0J9 — 2
CHEF, COMPTABILITÉ DU REVENU - AC, EMPLOI ET IMMIGRATION CANADA, OTTAWA (ONT.) K1A 0J9

APPENDIX B

SAMPLE OF FIN 3160 – REVENUE JOURNAL

APPENDIX C

SAMPLE OF IMM 60 VP–P (05–89) B – LOCAL VISITOR CONTROL

Employment and Immigration Canada Emploi et Immigration Canada

LOCAL VISITOR CONTROL - *FICHE DE CONTRÔLE LOCAL DES VISITEURS*

DOCUMENTATION OF GROUPS OF 15 OR MORE VISITORS EXEMPTED FROM SECTION 18 OF THE REGULATIONS
INSCRIPTION DES GROUPES D'AU MOINS 15 VISITEURS DISPENSÉS DE L'ARTICLE 18 DU RÈGLEMENT

NOTE:
- Although exempt from the provisions of Regulation 18 by virtue of paragraph 19(1)(d) of the Regulations, such groups of 15 or more artists are to be documented on IMM 60 VP-P for local control and bonding purposes.
- An additional copy should be made for each unit of a group expecting to leave Canada at different parts or different times.
- After immigration examination, the original of this form and an extra copy for each portion of a group leaving Canada separately, will be returned to the person in charge of the group for presentation to a Canadian Immigration Officer at the port of departure.
- Persons intending to remain in Canada for more than three (3) months must report to a Canadian Immigration Officer.

REMARQUE:
- *Bien qu'ils soient dispensés des dispositions de l'article 18 du Règlement aux termes de l'alinéa 19(1)d) du Règlement, ces groupes d'au moins quinze artistes doivent être inscrits sur l'IMM 60 VP-P pour des fins de contrôle local et de cautionnement.*
- *Un exemplaire supplémentaire doit être rempli pour chaque membre ou partie d'un groupe comptant quitter le Canada à divers points ou à différentes dates.*
- *Après l'examen de l'immigration, l'original du présent formulaire ainsi qu'un exemplaire supplémentaire pour chaque membre ou partie d'un groupe qui quitte le Canada séparément sera renvoyé au responsable du groupe qui devra les remettre à un agent d'immigration Canada au point de sortie.*
- *Les personnes qui comptent demeurer au Canada plus de trois mois doivent le signaler à un agent d'immigration Canada.*

Group Name and Address
Nom et adresse des membres du groupe

Itinerary - (With Dates, If Space is Insufficient Attach a Complete Itinerary)
Itinéraire - (Indiquez les dates et, si l'espace est insuffisant, joignez un itinéraire complet)

In/Out *Entrée/ sortie*	Surname *Nom* / Given Names *Prénom(s)* — Alphabetical Order - *Par ordre alphabétique*	Birth *Naissance* D-J M Y-A	Citizen of *Citoyen de*	Home Address in Full *Adresse domiciliaire au complet*
	1.			
	2.			
	3.			
	4.			
	5			
	6.			
	7.			
	8.			
	9.			
	10.			
	11.			
	12.			
	13.			
	14.			
	15.			
	16.			
	17.			
	18.			
	19.			
	20.			

IMM 60 VP-P (05-89) B

Canada

(OVER - *VERSO*)

APPENDIX C
SAMPLE OF IMM 60 VP–P (05–89) B – LOCAL VISITOR CONTROL

In/Out *Entrée/ sortie*	Surname *Nom* / Given Names *Prénom(s)* — Alphabetical Order - *Par ordre alphabétique*	Birth *Naissance* D-J M Y-A	Citizen of *Citoyen de*	Home Address in Full *Adresse domiciliaire au complet*
	21.			
	22.			
	23.			
	24.			
	25.			
	26.			
	27.			
	28.			
	29.			
	30.			
	31.			
	32.			
	33.			
	34.			
	35.			
	36.			
	37.			
	38.			
	39.			
	40.			

(If More Space is Required Use Additional IMM 60 VP-P)
(Si vous avez besoin de plus d'espace, utilisez un autre IMM 60 VP-P)

Signature of Person In Charge *Signature du responsable*		Manager's Name and Permanent Home Address *Nom et adresse domiciliaire permanente du directeur*			
Date of Original Entry - *Date de l'entrée initiale*	D-J M Y-A	Name of Office *Nom du bureau*		Allowed Entry Until *Séjour autorisé jusqu'au*	D-J M Y-A
Remarks - *Observations*					
Bond No. (IMM 514) *Cautionnement n° (IMM 514)*		Signature of Immigration Officer - Port of Entry *Signature de l'agent d'immigration - Point d'entrée*	Date	Signature of Immigration Officer - Port of Departure *Signature de l'agent d'immigration - Point de sortie*	Date

(DO NOT SEND A COPY TO NHQ UNLESS IMM 514 IS ISSUED)
(À MOINS QU'UN IMM 514 NE SOIT DÉLIVRÉ, N'ENVOYER AUCUNE COPIE À L'A.C.)

APPENDIX D

SAMPLE OF IMM 709 (12–92) B – REQUISITION FOR REFUND/FORFEITURE OF CASH SECURITY DEPOSIT

PROTECTED WHEN COMPLETED – B
PROTÉGÉ UNE FOIS REMPLI

Employment and Immigration Canada Emploi et Immigration Canada

CANADA IMMIGRATION
REQUISITION FOR REFUND / FORFEITURE OF CASH SECURITY DEPOSIT

IMMIGRATION CANADA
DEMANDE DE REMBOURSEMENT / CONFISCATION D'UN CAUTIONNEMENT EN ESPÈCES

ACT AND REGULATIONS — *LOI ET RÈGLEMENT*	
For deposits taken under sections 18, 23 and 103 of the Immigration Act, see instruments I-12, I-25 and I-28 for delegations of authority.	*Pour les gages déposés aux termes des articles 18, 23 et 103 de la Loi sur l'immigration, veuillez vous reporter aux documents officiels I-12, I-25 et I-28 pour les délégations de pouvoirs.*

CIC — *CIC*

File No. — *Référence*

BOND/DEPOSIT — *CAUTIONNEMENT/DÉPÔT*

Receipt No. — *Reçu nº*	Date of Bond/Deposit — *Date du cautionnement/dépôt*	Amount — *Montant*

Name of Depositor — *Nom du déposant*

Current Mailing Address of Depositor — *Adresse postale actuelle du déposant*

Deposit Made on Behalf of — *Cautionnement déposé au nom de*

Under Section — *Aux termes de l'article*

- ☐ Is Directed for Reimbursement — *Remboursement ordonné*
- ☐ Is Declared Forfeited — *Confiscation déclarée*
- ☐ Previous Forfeiture is Reversed and Directed for Reimbursement — *Confiscation antérieure annulée et remboursement ordonné*
- ☐ Is Directed for Partial Reimbursement (attach a copy of the IMM 514) — *Remboursement partiel ordonné (joindre une copie de l'IMM 514)*

REMARKS — *OBSERVATIONS*

Signature of Authorizing Officer — *Signature du fondé de pouvoir*

Title as per Delegation Instrument — *Titre conformément au document officiel de délégation de pouvoir*

Date

THE INFORMATION PROVIDED ON THIS FORM IS COLLECTED UNDER THE AUTHORITY OF THE IMMIGRATION ACT FOR THE PURPOSE OF REFUNDING/FORFEITING THE CASH DEPOSIT MADE BY THE DEPOSITOR NAMED ON THIS FORM ON BEHALF OF THE PERSON CONCERNED. IT IS PROTECTED BY THE PRIVACY ACT, IS ACCESSIBLE TO THE PERSONS CONCERNED AND WILL BE STORED IN PERSONAL INFORMATION BANK NUMBER EIC PPU 285.

LES RENSEIGNEMENTS FOURNIS DANS LE PRÉSENT DOCUMENT SONT RECUEILLIS EN VERTU DE LA LOI SUR L'IMMIGRATION AUX FINS DE REMBOURSER/CONFISQUER LE DÉPÔT EN ESPÈCES EFFECTUÉ PAR LE DÉPOSANT NOMMÉ DANS LE FORMULAIRE AU NOM DE LA PERSONNE CONCERNÉE. ILS SONT PROTÉGÉS PAR LA LOI SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS ET SERONT VERSÉS DANS LE FICHIER DE RENSEIGNEMENTS PERSONNELS CEI PPU 285 QUE LES PERSONNES CONCERNÉES PEUVENT PAR AILLEURS CONSULTER.

Canada

APPENDIX E

SAMPLE OF IMM 1416 (3–84) B – SOLEMN DECLARATION OF SOLVENCY BY BONDSPERSON

Employment and Immigration Canada / Emploi et Immigration Canada

File No.

Date

SOLEMN DECLARATION OF SOLVENCY BY BONDSPERSON

The information on this form is sought for the purpose of enforcing the Immmigration Act and determining your suitability as a bondsperson. Your response is voluntary. However, if insufficient information is available concerning your financial background, you may be found to be an unsuitable bondsperson. If you are a Canadian citizen or permanent resident, you may obtain more knowledge on the use of this information and your right to check and amend it by consulting the Federal Data Bank Catalogue which is available in main post offices. (The information collected is stored on Bank-P360.)

I _____ DO SOLEMNLY DECLARE THAT:

My full name is (block letters)

My date of birth is — Day | Month | Year

My address is

☐ I own ☐ I rent these premises

The details of other real estate owned by me are

The name and address of my employer are

The nature of my work is

I have been employed with this employer for

☐ I have a car ▶ | Make | Year | Registration No. | My driver's licence no. is

☐ I do not have a car

I deal with the following bank(s)

Name	Address

I have the following assets and liabilities, the amounts being approximate:

ASSETS	$	LIABILITIES	$
Property		Mortgage(s)	
Furniture		Loans(s)	
Car(s)		Credit card(s)	
Liquid assets		Other (specify) 1.	
Shares			
Bonds		2.	
Certificates			
Other (specify) 1.		3.	
2.			
3.		4.	
4.			
TOTAL ASSETS	$	**TOTAL LIABILITIES**	$
MONTHLY INCOME	$	**MONTHLY EXPENSES**	$

NET DIFFERENCE (TOTAL ASSETS — TOTAL LIABILITIES) ▶ $

and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.
I understand that any breach of any of the terms and conditions set out in a bond may result in a cash deposit being forfeited or a performance bond being enforced with a requirement that I pay to the Receiver General the full penal sum specified immediately upon demand

Signature of Declarant ▶

Declared before me _____ at _____

In the province of _____ this _____ day of _____ 19____

Signature of Immigration Officer ▶

(Français au verso)

IMM. 1416 (3-84)

Canada

APPENDIX F
SAMPLE OF IMM 1230 (01–93) B – PERFORMANCE BOND: THE *IMMIGRATION ACT*

PROTECTED WHEN COMPLETED - A

Employment and Immigration Canada Emploi et Immigration Canada

PERFORMANCE BOND
THE IMMIGRATION ACT

FOSS No.
File No.

CANADA
PROVINCE OF _____

In the matter of the Immigration Act (hereinafter called the Act) and

of _____
(Name of person)

KNOW ALL PERSONS BY THESE PRESENTS, that I, _____
(Name of person bound)

of _____
(Present address)

am held and firmly bound unto Her Majesty The Queen in right of Canada, Her Heirs and Successors in the penal sum of _____ dollars to be paid to the Receiver General of Canada, for which payment I bind myself, my Heirs, Executors, and Administrators and everyone of them firmly by thses presents.

The condition of the obligation is such that if the said _____
(Name of person)

☐ who is being released from detention, pursuant to the Act, under
☐ 23(3)(b); ☐ 103(3)(a); ☐ 103(3.1)(a); ☐ 103(5); ☐ 103(7) ☐ other_____

AND

☐ in respect of whom terms and conditions have been imposed pursuant to the Act, under
☐ 14(3); ☐ 19(3); ☐ 23(2); ☐ 23(3)(c); ☐ 32(4); ☐ 103(3)(c); ☐ 103(3.1)(c); ☐ other_____

ABIDES BY THE FOLLOWING TERMS AND CONDITIONS:

then this obligation shall be void, but otherwise shall be and remain in full force and effect.

Dated at _____ this _____ day of _____ 19 _____.

Signed and delivered in the presence of:

_____ (Signature of witness)

_____ (Signature of person bound)

Required by me on the _____ day of _____ 19 _____ at _____

in the province of _____.

_____ (Signature of authorized officer and title)

☐ This order made by adjudicator _____ (Name) on _____ (Date).

NOTICE

In the case of default or breach of any of the terms and conditions agreed to above legal proceedings may be taken to enforce the bond.

IMM 1230 (01-93) B

THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION

FRANÇAIS AU VERSO

Canada

APPENDIX G

SAMPLE OF IMM 1259 (01–93) B – PERFORMANCE BONDS: THE *IMMIGRATION ACT* (WHERE THERE ARE COSIGNERS)

PROTECTED WHEN COMPLETED - A

Employment and Immigration Canada Emploi et Immigration Canada

PERFORMANCE BOND
THE IMMIGRATION ACT
(Where there are CO-SIGNERS)

FOSS No.
File No.

CANADA
PROVINCE OF _____

In the matter of the Immigration Act (hereinafter called the Act) and

of _____
(Name of person)

KNOW ALL PERSONS BY THESE PRESENTS, that we _____
(Name of person jointly bound)

of _____
(Address)

and _____, of _____
(Name of person jointly bound) (Address)

be held and firmly bound unto Her Majesty The Queen in right of Canada, Her Heirs and Successors in the penal sum of _____ dollars in lawful money of Canada, for which payment we jointly and severally bind ourselves, our, and each of our heirs, executors, and administrators firmly by these presents.

The condition of the obligation is such that if the said _____
(Name of person)

☐ who is being released from detention, pursuant to the Act, under
☐ 23(3)(b); ☐ 103(3)(a); ☐ 103(3.1)(a); ☐ 103(5); ☐ 103(7) ☐ other_____

AND

☐ in respect of whom terms and conditions have been imposed pursuant to the Act, under
☐ 14(3); ☐ 19(3); ☐ 23(2); ☐ 23(3)(c); ☐ 32(4); ☐ 103(3)(c); ☐ 103(3.1)(c); ☐ other_____

ABIDES BY THE FOLLOWING TERMS AND CONDITIONS:

then this obligation shall be void, but otherwise shall be and remain in full force and effect.

Dated at _____ this _____ day of _____ 19 ___

Signed and delivered in the presence of:

_____ _____
(Signature of witness) (Signature of person bound)

_____ _____
(Signature of witness) (Signature of person bound)

Required by me on the _____ day of _____ 19 _____ at _____

in the province of _____.

_____
(Signature of authorized officer and title)

☐ This order made by adjudicator _____ on _____
Name Date

NOTICE

In the case of default or breach of any of the terms and conditions agreed to above legal proceedings may be taken to enforce the bond.

IMM 1259 (01-93) B THIS FORM HAS BEEN ESTABLISHED BY THE MINISTER OF EMPLOYMENT AND IMMIGRATION

FRANÇAIS AU VERSO

Canada

APPENDIX H

MINIMUM TERMS AND CONDITIONS FOR ACKNOWLEDGEMENT OF TERMS AND CONDITIONS (IMM 1262)

1. That (the person concerned) shall keep the peace and be of good behaviour.
2. That (the person concerned) shall report when and where required to do so by an (Immigration Officer (IO) or Adjudicator), for all lawful purposes of the *Immigration Act*.
3. That (the person concerned) advise an immigration officer of any change of address, 48 hours before moving.

IMMIGRATION

Canada

Chapter EC 9
Judicial Review



Employment and Immigration Canada
Emploi et Immigration Canada

Judicial Review

Abbreviations and Short Forms	
Act	*Immigration Act*, as amended
CIC	Canada Immigration Centre
CPO	Case Presenting Officer
Commission	Canada Employment and Immigration Commission
Convention	United Nations 1951 *Convention Relating to the Status of Refugees* and 1967 *Protocol Relating to the Status of Refugees*
CRDD	Convention Refugee Determination Division of the Immigration and Refugee Board
FOSS	Field Operational Support System
IAD	Immigration Appeal Division of the Immigration and Refugee Board
IO	Immigration Officer
IRB	Immigration and Refugee Board
Minister	Minister of Employment and Immigration
SIO	Senior Immigration Officer

1. INTRODUCTION **1**
1.1 What this chapter is about 1
1.2 Policy intent 1

2. GENERAL INFORMATION **2**
2.1 Judicial review and appeal rights 2
2.2 Grounds for review 2
2.3 Leave requirements 2
2.4 Decisions of the Federal Court 2
2.5 Appeals from the Federal Court—Trial Division to the Federal Court of Appeal 3
2.6 Appeals from Federal Court of Appeal decisions 3
2.7 Protection of confidential information 3
2.8 Habeas Corpus 3
2.9 Applications by the Minister for judicial review 3

3. PROCEDURES **4**
3.1 Time limits for leave applications 4
3.2 Extensions of time 4
3.3 Stays of execution of removal orders 4
3.3.1. Appeals to the IAD 4
3.3.2. Applications to the Federal Court—Trial Division and appeals to the Federal Court of Appeal and Supreme Court 5
3.3.3. Determination of ineligibility 6
3.3.4. No statutory stays in certain cases 6
3.3.5. Applications for stays to the Federal Court 6
3.4 Role of an IO whose decision is subject to judicial review proceedings 6
3.4.1. Requests under rule 9 6
3.4.2. Requests under rule 14 7
3.4.3. Requests under rule 15 7
3.5 Proof of filing 8
3.6 Role of the CIC 8
3.7 Role of the regional officer responsible for litigation 8
3.8 Role of appeals office 8
3.8.1. Review of IAD decisions 8
3.8.2. Review of CRDD decisions 8
3.9 Role of the Appeals Section, National Headquarters 9
3.10 FOSS 9
3.11 Role of the Department of Justice 10
3.12 Communication with court officials 10
3.13 Calculating time limits 10

4. APPLICATIONS FOR REVIEW OF DECISIONS BY THE IAD, THE CRDD AND ADJUDICATORS **11**
4.1 General 11
4.2 Recommendations for judicial review 11

APPENDIX A
FEDERAL COURT ACT, SECTIONS 18 AND 18.1 ..... **13**

APPENDIX B
PREROGATIVE WRITS **15**
1. Habeas Corpus 15

2. Certiorari 15
3. Mandamus 15
4. Prohibition 15

APPENDIX C
EXTRACT FROM FEDERAL COURT IMMIGRATION RULES, 1993 17

1. INTRODUCTION

1.1 What this chapter is about

This chapter discusses judicial review by the Federal Court of decisions by the Immigration Appeal Division (IAD) and the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board, and of decisions by adjudicators and any other decisions made under the *Immigration Act* or the *Immigration Regulations* for which no appeal rights have been provided in the Act.

Decisions which can be the subject of judicial review proceedings in the Federal Court–Trial Division include removal orders against visitors, negative decisions by immigration officers (IOs) in A114(2) cases and refusals of independent applications by visa officers.

> ***Note:*** *References to the Immigration Act, as amended, appear in the text in this chapter with an "A" prefix followed by the section number, as here: the Act, subsection A114(2).*

Either the client or the Minister may seek leave to apply for judicial review of an adverse decision from the Federal Court–Trial Division. If leave is granted, the court may grant or dismiss the judicial review application.

1.2 Policy intent

The *Federal Court Act* provides a way for a person who is the subject of a decision by a government tribunal, and who believes the decision to be incorrect, to seek judicial review of that decision. The *Immigration Act*, as amended, provides for the right to seek judicial review.

2. GENERAL INFORMATION

2.1 Judicial review and appeal rights

The *Immigration Act*, as amended, does not provide for rights of appeal directly to the Federal Court for persons subject to orders or decisions made under the Act. Instead, they have a right to seek judicial review.

The historical origin of judicial review is the inherent jurisdiction of superior courts to review the decisions of inferior tribunals. Judicial review of decisions by federal tribunals is now codified in the *Federal Court Act*. Appeal rights, by contrast, only exist where they are specifically provided by statute.

Another difference between judicial review and appeals is that the remedies available on appeal are usually broader than for judicial review. A court deciding an appeal will sometimes substitute its own decision on the case for that of the tribunal, rather then simply setting aside the decision and sending the case back to the tribunal.

APPENDIX A is an extract from the *Federal Court Act* giving the grounds on which applications for review are based. APPENDIX B describes the common-law writs most frequently used in judicial review.

2.2 Grounds for review

Section 18 of the *Federal Court Act* sets out the jurisdiction of the Federal Court–Trial Division to review decisions of federal agencies. Section 18.1 outlines the powers of the Trial Division. Both sections are reproduced in APPENDIX A.

All decisions and orders made under the authority of the *Immigration Act* or its rules or regulations may be reviewed by the Federal Court–Trial Division under s. 18 of the *Federal Court Act* [A82.1(1)]. In the event of an inconsistency between any of the provisions of A82.1, A82.2 and A83 and any provision of the *Federal Court Act*, the provisions of the *Immigration Act* prevail to the extent of the inconsistency [A84(2)].

The grounds on which an application for judicial review lies to the Federal Court–Trial Division from a decision are specified in s. 18.1(4) of the *Federal Court Act* (see APPENDIX A).

2.3 Leave requirements

Before a s. 18 application under the *Federal Court Act* can be started, A82.1 requires that leave of the Federal Court–Trial Division be obtained in immigration cases, except decisions of visa officers on applications made under A9, A10 or A77. This is a screening process by which a judge of the court determines whether or not a case has sufficient merit to proceed.

2.4 Decisions of the Federal Court

If leave is granted and the matter proceeds to a full hearing, the court may dispose of the case by dismissing the application or by setting aside the decision and referring it back for determination with appropriate directions [*Federal Court Act*, s. 18.1(3)].

2.5 Appeals from the Federal Court—Trial Division to the Federal Court of Appeal

The decision of a judge of the Federal Court–Trial Division regarding an application for leave to apply for judicial review cannot be appealed to the Federal Court–Appeal Division (the Federal Court of Appeal) [A82.2]. If leave is granted, the decision of the Trial Division may be appealed to the Federal Court of Appeal only if the Trial Division has, at the time of rendering judgement, certified that a serious question of general importance is involved and has stated that question [A83(1)]. If a judge of the Trial Division does not certify that a serious question of general importance is involved, there can be no appeal [A83(4)].

2.6 Appeals from Federal Court of Appeal decisions

Decisions of the Federal Court of Appeal on appeal from decisions of the Trial Division may be appealed, with leave, to the Supreme Court of Canada [*Supreme Court Act*, s. 40(1)].

2.7 Protection of confidential information

A visa officer might decide to refuse to issue a visa to a person on the grounds that the person is described in any of A19(1)(c.1), A19(1)(c.2), A19(1)(d), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(k) or A19(1)(l). If the decision is the subject of an application for judicial review, the Minister may make an *in camera* application in the absence of the person concerned to the Federal Court–Trial Division for the non-disclosure of information obtained in confidence from the government or an institution of a foreign state, or from an international organization of states or an institution of such an organization. The grounds for the application will be that disclosure of the information to the person would be injurious to national security or to the safety of persons [A82.1(10)].

2.8 *Habeas Corpus*

In some cases a person in immigration detention will seek a writ of *habeas corpus* from a provincial superior court, asking the court to review the lawfulness of the detention. Whether or not applicants can apply to provincial superior courts for the issuance of prerogative writs other than *habeas corpus* remains an unresolved question.

2.9 Applications by the Minister for judicial review

Decisions of the IAD, the CRDD and adjudicators serve as legal precedents for IOs. If any of these decision-makers makes a decision on grounds that conflict with Commission policy or are erroneous, it is essential that you consider the possibility of the Minister's making an application for judicial review by the Federal Court.

3. PROCEDURES

3.1 Time limits for leave applications

An application for leave to start a proceeding for judicial review must be made within 15 days after the day on which the applicant is notified of the decision or order or becomes aware of the matter [A82.1(3)].

In the absence of proof to the contrary, under A2(4) a person (including the Minister) is deemed to be notified of a decision under the Act, other than a decision of a visa officer, at the following times:

a) if the applicant was not entitled to written reasons and the decision was rendered in his or her presence, on the day it was rendered

b) if the applicant was not entitled to written reasons and the decision was not rendered in his or her presence, seven days after the day on which notice of the decision was sent to the person, or

c) if the applicant was entitled to written reasons or to request written reasons, and requested them within the time provided for so doing, seven days after the day on which the written reasons were sent to the applicant.

For a conditional removal order, the time specified within which to apply begins on the day after the day on which the applicant is notified of the order or notice, not on the day the order becomes effective. The deemed-notification provisions of A2(4) also apply.

3.2 Extensions of time

Extensions of time are granted only for special reasons. If leave to apply for judicial review is granted, the application for judicial review is deemed to have been started and the judge granting leave will fix the day and place for the hearing of the application [A82.1(6)].

An application for an extension of time within which to file an application for review will normally accompany an A82.1 application that has been filed out of time. Preparation of case material is not required in these cases until the extension is granted, unless notified otherwise by the court registry.

3.3 Stays of execution of removal orders

3.3.1. Appeals to the IAD

If the person concerned has a right of appeal to the IAD, under A49(1)(a) the execution of an effective removal order is stayed at the request of that person until the time provided for the filing of the appeal has elapsed. The time provided for filing an appeal to the IAD is 30 days from the day on which the removal order was served on the person [*IAD Rules*, rule 6(1)].

Where an appeal from the removal order is filed with the IAD, the execution of the removal order is stayed until the appeal has been heard and disposed of or has been declared abandoned by the IAD [A49(1)(b)].

Where the appeal to the IAD from a removal order has been dismissed, see section 3.3.2. below.

3.3.2. Applications to the Federal Court—Trial Division and appeals to the Federal Court of Appeal and Supreme Court

Under A49, where an appeal to the IAD from a removal order has been dismissed, or where the CRDD has determined a person not to be a Convention refugee, the execution of an effective removal order is stayed in the following cases:

a) the person concerned files an application in the Federal Court—Trial Division for leave to apply for judicial review of the decision of the tribunal, or has signified in writing to an IO the intention to file such a leave application. The removal order is stayed until the application for leave has been heard and disposed of, or the time normally limited for filing an application has elapsed [A49(1)(c)(i)]. The leave application must be filed with the Trial Division and served within 15 days after the day on which the applicant is notified of the decision or order [A82.1(2)]. An obvious indication of a leave application having been filed out of time would be the filing of a request for an extension of the time along with the leave application.

b) where leave is granted, the removal order is stayed until the judicial review proceeding has been heard and disposed of [A49(1)(c)(i)].

c) where the person concerned files with the Federal Court of Appeal an appeal of the decision of the Trial Division, and a judge of the Trial Division has, at the time of rendering judgement, made a certification in accordance with A83(1), or where the person concerned has signified in writing to an IO an intention to file a notice of appeal to commence such an appeal, the removal order is stayed until the appeal has been heard and disposed of or the time normally limited for filing the appeal has elapsed [A49(1)(c)(ii)].

d) where the person concerned files an application for leave to appeal or signifies in writing to an IO an intention to file an application for leave to appeal the decision of the Federal Court of Appeal to the Supreme Court of Canada, the removal is stayed until the question of leave is decided or the time normally limited for filing such an application has elapsed. Where leave is granted, the removal is stayed until the appeal has been heard and disposed of or the time normally limited for filing the appeal has elapsed [A49(1)(c)(iii)].

e) where an adjudicator has determined that a person who has claimed refugee status or whose appeal has been dismissed by the IAD is described in one of the following paragraphs of the Act, the removal order is stayed only until seven days have elapsed from the time the order was made or became effective, whichever is later, unless the person agrees that the removal order may be executed before the expiration of the seven day period [A49(1)(d)]: A19(1)(c), A19(1)(c.1), A19(1)(c.2), A19(1)(d), A19(1)(e), A19(1)(f), A19(1)(g), A19(1)(j), A19(1)(k), A19(1)(l), A19(2)(a), A19(2)(a.1), A19(2)(b), A27(1)(a), A27(1)(a.1), A27(1)(a.2), A27(1)(a.3), A27(1)(d), A27(1)(g), A27(1)(h), or A27(2)(d).

f) where an unsuccessful refugee claimant is determined by the CRDD under A69.1(9.1) not to have a credible basis for a refugee claim, the execution of the removal order is only stayed for seven days after the

day on which the order became effective, unless the claimant agrees that the removal order may be executed before the expiration of that seven-day period [A49(1)(f)].

3.3.3. Determination of ineligibility

In a case where the person concerned was determined not to be eligible to have his or her claim referred to the CRDD, the execution of the removal order against that person is stayed until seven days have elapsed from the day the order was made or became effective, whichever is later, unless the person agrees that it may be executed before the seven days are up [A49(1)(e)].

3.3.4. No statutory stays in certain cases

Removal orders are not stayed under A49(1) for persons who are subject to A20(1)(a) reports and residing or sojourning in the United States or St. Pierre and Miquelon [A49(1.1)].

3.3.5. Applications for stays to the Federal Court

The Federal Court can, at any time, order that the execution of a removal order be stayed. *No person must ever be removed in contravention of such an order*. Similarly the Minister can, through his or her officials, give an undertaking not to remove a person for a certain length of time. This is usually done in the context of litigation. *No person must ever be removed in contravention of such an undertaking.*

It is *imperative* that an accurate entry respecting the stay order or undertaking be made in FOSS as soon as possible after the order is made or the undertaking given. If the order or undertaking is made in the context of litigation, make the entry on the *Litigation* screen.

If any doubt exists concerning our ability to remove an unsuccessful claimant, the CIC should consult Regional Headquarters. It is important that removals not be deferred unnecessarily because of misinterpreting these provisions.

3.4 Role of an IO whose decision is subject to judicial review proceedings

An IO must, if presented with proof that an application for judicial review has been filed with the Federal Court concerning an order or decision made by the officer, send a copy of the application to the regional officer responsible for Federal Court litigation.

Under the *Federal Court Immigration Rules, 1993*, "tribunal" is defined as the person or body whose decision, order, act or omission is the subject of an application. This means that an IO whose decision, order, act or omission is the subject of a judicial review application is considered a tribunal by the Federal Court, and has certain obligations under the rules to provide information to the court.

3.4.1. Requests under rule 9

If a client indicates in an application for leave that he or she has not received written reasons from the tribunal for the decision which is to be challenged, the Federal Court registry will, under rule 9 of the *Federal Court Immigration Rules, 1993*, send the tribunal a document entitled "Request to Tribunal".

On receiving a Request to Tribunal concerning a decision, order, act or omission made by an IO, the officer or an officer designated to fulfil this function must send a certified true copy of the decision or order and written reasons, if any, to each of the parties including the Department of Justice lawyer assigned to the case, and two certified true copies to the Federal Court registry. If the IO gave no reasons for the decision or order, or gave reasons but did not record them, the officer must send an appropriate written notice stating this fact to all the parties and the registry.

Direct any questions concerning the materials to be sent to the court to the designated regional officer responsible for litigation.

APPENDIX C includes rule 9 of the *Federal Court Immigration Rules, 1993*.

3.4.2. Requests under rule 14

In cases where the judge considers that documents in the possession or control of the tribunal are required to dispose of the application for leave properly, he or she may order the tribunal to produce and file the additional documents. The order will specify the material to be provided, and the tribunal must provide certified true copies of the material without delay: one to each of the parties including the Department of Justice lawyer assigned to the case, and two to the registry [*Federal Court Immigration Rules, 1993*, rule 14; see APPENDIX C].

3.4.3. Requests under rule 15

The court registry sends all orders granting leave to apply for judicial review to the tribunal whose decision is the subject of the application [*Federal Court Immigration Rules, 1993*, rule 15]. As a result, IOs who are considered tribunals may receive copies of such orders. On receiving the order, the officer who made the decision or an officer designated to fulfil this function must immediately prepare a record containing the following documentation, on consecutively numbered pages and in this order:

a) the decision or order about which the application is made, and any written reasons for it. If the IO did not give written reasons, include an appropriate notice to that effect.

b) all papers relevant to the matter that are in the officer's possession or control

c) any affidavits or other documents filed during the hearing or proceeding that resulted in the decision or order, and

d) a transcript, if any, of any oral testimony given during the hearing or proceeding that led to the decision or order, or to other matter that is the subject of the application.

The IO must send a certified true copy of this record to each of the parties and two copies to the Federal Court Registry [*Federal Court Immigration Rules, 1993*, rule 17; see appendix C]. Direct any questions concerning the materials to be sent to the court to the designated regional officer responsible for litigation.

Because these procedures are new, they may need some refinement and development by regional officials so that IOs who make decisions or orders can meet their new obligations under the *Federal Court Immigration Rules, 1993*. If problems arise, please consult Regional Headquarters.

3.5 Proof of filing

Proof of filing may be a copy of the application stamped by the Federal Court, or advice from the court registry or the Department of Justice that the application has been filed.

3.6 Role of the CIC

When an application for leave to begin judicial review proceedings is outstanding before the Federal Court, the CIC will advise Regional Headquarters or the Department of Justice lawyer of any developments and provide any assistance requested, in accordance with regional procedures. In the case of a Minister's judicial review application, notify National Headquarters of developments.

3.7 Role of the regional officer responsible for litigation

The regional officer responsible for liaising with the Appeals Section at National Headquarters and the Department of Justice will, on receiving notification that an application has been filed in the Federal Court or a provincial court by a person concerned, must ensure that the FOSS *Litigation* screen is completed. On receiving a court order in such an application, the officer will update the FOSS *Litigation* screen.

3.8 Role of appeals office

On receiving a notice seeking leave to apply for judicial review, the appeals office will ensure that the regional office of the Department of Justice has been served and, if necessary, provide them with:

a) a copy of the notice seeking leave to apply for judicial review and accompanying material

b) the file of the appeals office, if requested, and

c) any material required from field offices.

In providing the file to the Department of Justice lawyer, the appeals office should retain copies of key documents on a skeleton file, in case the material sent is misplaced or questions concerning the case are subsequently directed to the appeals office.

3.8.1. Review of IAD decisions

A82.1(3) requires that an application for leave to apply for judicial review be filed with the court within 15 days after the day on which the applicant is notified of the IAD decision. Although an extension of time may sometimes be granted for special reasons, the Federal Court of Appeal has held that the absence of the IAD reasons for judgement is not a proper reason for extending the time.

If the IAD allows an appeal before issuing reasons and the appeals officer who represented the Minister believes that there may be grounds for a successful judicial review application, the officer should consult his or her supervisor, and in appropriate cases notify the Chief, Appeals Section, National Headquarters by fax, telex or telephone of the decision and the recommendation for beginning judicial review proceedings. The officer must also provide a rationale for the recommendation.

3.8.2. Review of CRDD decisions

If the Minister participated in the hearing of a refugee claim, or if the Minister is interested in a claimant, and the CRDD has rendered a decision in favour of the claimant, the appeals officer assigned to the file

will make a written request for the reasons of the Board and file that request in the appropriate registry within ten days after the day the Minister was notified of the decision [A69.1(11)(b); *CRDD Rules*, rule 32].

If the Minister made an application to the CRDD under A69.2 for cessation or reconsideration and the Board renders a decision favourable to the person concerned, the appeals officer responsible for the file must request written reasons from the Board within ten days after the day the Minister is notified of the decision [A69.3(7)(b)]. On receiving the reasons, the officer must immediately review them. If the officer believes that the Board has erred in its decision, the officer must obtain the concurrence of his or her supervisor and refer the decision to the Chief, Appeals Section, National Headquarters, with a recommendation for beginning a judicial review application and a rationale for the recommendation.

3.9 Role of the Appeals Section, National Headquarters

On being made aware of applications for judicial review of IAD decisions or decisions of the CRDD in cases in which the Minister was involved, the Appeals Section at National Headquarters will advise the regional appeals office affected and forward copies of the material filed with the court, if available.

Following a recommendation by an appeals officer or a case presenting officer (CPO) to begin judicial review proceedings by the Minister, the Chief of Appeals Section will review the case and, in consultation with Legal Services, determine whether to launch an application.

Rules 9, 14 and 17 of the *Federal Court Immigration Rules, 1993* impose new obligations on IOs whose decisions or orders are subject to judicial review proceedings. If an officer has any questions about the material to be filed with the Federal Court registry under rules 9 or 14, or the preparation and filing of the record under rule 17, the officer should contact either the Department of Justice lawyer handling the case or the Appeals Section at National Headquarters.

For litigation before the courts, the Appeals Section at National Headquarters provides Department of Justice lawyers handling the litigation with information, advice or further instructions as necessary on issues arising during litigation; information on Commission policy or procedures; and contact with Commission personnel.

3.10 FOSS

The FOSS *Litigation* module tracks the status of immigration litigation before the federal or provincial courts.

The designated regional officer responsible for litigation enters applications started by the person concerned into FOSS. The Appeals Section at National Headquarters enters applications started by the Minister.

All FOSS users may view the *Litigation* screen, which shows:

a) the type of decision that gave rise to the litigation, such as a negative CRDD decision, an SIO departure order or eligibility decision, and so forth

b) when the litigation was filed, and in which court

c) whether a stay of removal is applicable for the particular client: in other words, whether removal of the client is prevented by a statutory stay under A49(1), a court-ordered stay, or a Ministerial stay

d) whether the party was granted leave to begin an application for judicial review or appeal, as the case may be, and

e) the final outcome of the judicial review application or appeal.

3.11 Role of the Department of Justice

Lawyers of the Department of Justice represent the Minister in all applications before the Federal Court and the provincial courts. They have standing instructions to oppose all applications as a matter of course. However, they have discretion about whether or not to contest leave applications without further consultation in cases where they consider that leave is likely to be granted.

3.12 Communication with court officials

CIC staff must not communicate directly with or send memoranda or files directly to Federal Court officials, except as noted here and in section 3.4 above. Channel communications through the appeals officers or the Department of Justice lawyers assigned to the individual cases, or through Regional Headquarters. The only information that officers may send directly are certified true copies of the decision or order and any reasons for it, in compliance with rule 9, and certified true copies of the record prepared in accordance with rule 17 of the *Federal Court Immigration Rules, 1993*.

In all communications with the courts, officers must ensure that the information provided is accurate and that no personal comments, observations or opinions are included or any submission made. Where officers feel it is necessary to add information explaining, for example, a delay in service or delivery of documents, they must forward a copy of the covering letter to the applicant and counsel.

In case of doubt as to whether to send a particular document directly, officers should seek advice from Regional Headquarters or the Department of Justice lawyer.

3.13 Calculating time limits

The *Interpretation Act* governs the calculation of time limits in federal statutes, regulations and rules:

a) when a statute refers to a number of days (not "clear days") between two events, *exclude* the day on which the first event happened, and *include* the day on which the second event is to occur [*Interpretation Act*, s. 27(2)]

b) when the time limit for the performance of a required action expires or falls on a holiday, the action may be performed on the next work day after the holiday. Sundays are holidays; Saturdays are not [*Interpretation Act*, s. 26].

For example, if there is a 15-day time limit to appeal a decision made on June 2, begin the count on June 3 and end it on June 17. Do not leave out holidays in counting up to the 15th day. June 17 would therefore be the last day to file, unless it was a Sunday, in which case June 18 would be the last day. If June 17 is a Saturday and the office is closed, then the appeal must be filed on June 16.

4. APPLICATIONS FOR REVIEW OF DECISIONS BY THE IAD, THE CRDD AND ADJUDICATORS

4.1 General

The person concerned or a Department of Justice lawyer (on behalf of the Minister) may file an application to a judge of the Federal Court–Trial Division for leave to apply for judicial review of a decision of the IAD in A70, A71 or A77 appeals, or of a decision of the CRDD regarding refugee determination, cessation of refugee status, reconsideration of a determination or abandonment [A82.1(1)].

Where a decision of an adjudicator is questioned, but does not fall within the scope of A71, the Minister may make an application for judicial review to the Federal Court—Trial Division. An example of this circumstance might be a decision to release from detention. A significant procedural error made by the adjudicator may also warrant an application for judicial review.

The Minister may seek leave to apply for judicial review of a CRDD decision whether or not the Minister's representative attended or took part in the proceedings [A82.3(7)].

The application for leave to apply for judicial review must be served and filed with the Federal Court within 15 days after the day on which the applicant is notified of the decision of the IAD, the CRDD or the adjudicator, as the case may be [A82.1(3)].

Where reasons have been requested in writing within ten days after the day on which the applicant is notified of the decision, the 15-day time period for filing the leave application does not start to run until seven days after the day on which the written reasons were sent to the applicant [A2(4), A69.1(11)(b), A69.3(7)(b), A69.4(5)].

In A77 appeals, however, if the IAD renders its decision and reasons from the bench in the presence of the applicant, the applicant is deemed to be notified of the decision on the day it was rendered [A2(4), A77(4), A82.1(3)].

If the decision was not rendered in the presence of the applicant and reasons are not requested in writing within ten days, the 15-day time period for filing the leave application starts to run seven days after the day on which notice was sent to the applicant.

4.2 Recommendations for judicial review

Where an appeals officer or CPO believes that there may be grounds to seek judicial review of a decision of the IAD, the CRDD or an adjudicator, the officer will, in consultation with his or her supervisor and within five days of the decision being rendered, forward a report by facsimile to the Chief of the Appeals Section at National Headquarters. This report must include both the recommendation for judicial review and the rationale for the recommendation.

It is essential that the report describe the errors of law or fact or mixed law and fact that could warrant judicial review. The report should also contain the following information:

a) the name and telephone number of the appeals officer or CPO responsible for the file, and his or her supervisor

b) the CIC file number and, if applicable, the appeals office file number

c) the full name, date of birth, country of birth, nationality and address of the person concerned and any other family members involved. In A77 appeals, this data is required for both the appellant or sponsor and the applicant for permanent residence

d) the name and address of the counsel, if any, of the person concerned

e) if the adjudicator's decision is in issue, the allegations under the Act

f) a copy of the officer's notes taken at the hearing. Because many requests for review involve allegations that the decision-maker ignored or misconstrued evidence, it is imperative that the officer acting at the hearing or inquiry take detailed notes, and

g) a detailed summary of the decision and reasons of the tribunal. The summary should note whether the tribunal rendered its decision and reasons from the bench and if so, the date of that decision. If applicable, the report should also note whether written reasons have been requested in writing within the time period set out in the Act.

When written reasons are received by the CPO or the appeals officer in cases where judicial review is being considered, it is imperative that they be forwarded immediately by facsimile to the Chief of the Appeals Section at National Headquarters.

APPENDIX A
FEDERAL COURT ACT, SECTIONS 18 AND 18.1

The following sections of the *Federal Court Act* are qualified by A84(2) of the *Immigration Act*, which specifies that in the event of an inconsistency between any of the provisions of A82.1 to A83 and any of the provisions in the *Federal Court Act*, the provisions of the *Immigration Act* prevail to the extent of the inconsistency. This is especially relevant to the time limits set out in s. 18.1(2) of the *Federal Court Act*, which are superseded by the time limits set out in A82.1.

18(1) Subject to section 28, the Trial Division has exclusive original jurisdiction

(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

(2) The Trial Division has exclusive original jurisdiction to hear and determine every application for a writ of *habeas corpus ad subjiciendum*, writ of *certiorari*, writ of prohibition or writ of *mandamus* in relation to any member of the Canadian Armed Forces serving outside Canada.

(3) The remedies provided for in subsections (1) and (2) may be obtained only on an application for judicial review made under section 18.1.

18.1(1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

(2) An application for judicial review in respect of a decision or order of a federal board, commission or other tribunal shall be made within thirty days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected thereby, or within such further time as a judge of the Trial Division may, either before or after the expiration of those thirty days, fix or allow.

(3) On an application for judicial review, the Trial Division may

(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in so doing; or

(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

(4) The Trial Division may grant relief under subsection (3) if it is satisfied the federal Board, commission or other tribunal

(a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

(b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

(d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;

(e) acted, or failed to act by reason of fraud or perjured evidence; or

(f) acted in any other way that was contrary to law.

(5) Where the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Trial Division may

(a) refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and

(b) in the case of a defect in form or a technical irregularity in a decision or order, make an order validating the decision or order, to have effect from such time and on such terms as it considers appropriate.

APPENDIX B
PREROGATIVE WRITS

The principal common-law means for judicial review of the decisions of government tribunals are found in the remedies of *habeas corpus*, *certiorari*, *mandamus* and prohibition. Although they are now regulated by legislation, their origins were in the common law. They are issued only by superior courts: those courts which, historically, did not derive their authority from statute but from the Crown. These remedies are referred to as "prerogative writs", a term which emphasizes that they are issued at the discretion of the court.

Although the function of each writ is somewhat different, the main feature of each is to permit the courts to supervise the actions of inferior tribunals ("inferior" means a court that is subject to the control of a higher court). This supervisory role is not all-encompassing, because the courts are limited in the extent to which they can go beyond the jurisdictional and procedural aspects of a decision to review the actual merits.

1. *HABEAS CORPUS*

This means literally "you have the body". It directs the authority who has an individual in custody to come forward and justify the detention. This centuries-old remedy against arbitrary imprisonment is fundamental to our system of justice.

The detaining authority must make a "return", or response, to the writ, to show that the detention is lawful.

2. *CERTIORARI*

Roughly translated this means "inform me more fully". This writ commands an inferior tribunal to provide its record to the superior court for review "to the end that justice might be done". The result of a successful application will be the quashing of the decision of the tribunal. These writs are not usually issued if there is an appeal process provided by statute.

On *certiorari* the court does not delve into the merits of the case, but questions the jurisdictional and procedural aspects of the decision.

3. *MANDAMUS*

This writ ("we command") is issued to compel the performance of a duty. It is available in cases where the injured party has a right to have a thing done and has no other specific means of compelling its performance. It is used to compel public officers to perform duties imposed upon them by common law or by statute, or to compel tribunals to proceed in matters within their jurisdiction. The person against whom it is issued must be under a legal duty to act in a certain way, must have been asked to act, and must have refused to do so. If granted, the writ compels the performance of the act required.

4. PROHIBITION

This writ is issued to prohibit the exercise of a particular function or act. It is considered to be a sister remedy to *certiorari*; the two differ in the time appropriate for their use. While *certiorari* quashes something already done erroneously, prohibition seeks to prevent an error from either occurring or continuing. Prohibition does not lie until a right to complain has arisen, but it may be sought as soon as an absence of jurisdiction has either arisen or may clearly be foreseen.

EXTRACT FROM

APPENDIX C

EXTRACT FROM *FEDERAL COURT IMMIGRATION RULES, 1993*

Obtaining Tribunal's Decision and Reasons

9. (1) Where an application sets out that the applicant has not received the written reasons of the tribunal, the Registry shall forthwith send the tribunal a written request in Form IR-3 as set out in the schedule.

(2) Upon receipt of a request under subrule (1) a tribunal shall, without delay,

(*a*) send a copy of the decision or order, and written reasons therefor, duly certified by an appropriate officer to be correct, to each of the parties, and two copies to the Registry; or

(*b*) if no reasons were given for the decision or order in respect of which the application is made, or reasons were given but not recorded, send an appropriate written notice to all the parties and the Registry.

(3) A tribunal shall be deemed to have received a request under subrule (1) on the tenth day after it was sent by mail by the Registry.

(4) The applicant shall be deemed to have received the written reasons, or the notice referred to in paragraph 9(2)(*b*), as the case may be, on the tenth day after it was sent by mail by the tribunal.

Disposition of Application for Leave

14. (1) Where

(*a*) any party has failed to serve and file any document required by these Rules within the time fixed, or

(*b*) the applicant's reply memorandum has been filed, or the time for filing it has expired,

a judge may, without further notice to the parties, determine the application for leave on the basis of the materials then filed.

(2) Where the judge considers that documents in the possession or control of the tribunal are required for the proper disposition of the application for leave, the judge may, by order, specify the documents to be produced and filed and give such other directions as the judge considers necessary to dispose of the application for leave.

(3) The Registry shall send to the tribunal a copy of an order made under subrule (2) forthwith after it is made.

(4) Upon receipt of an order under subrule (2), the tribunal shall, without delay, send a copy of the materials specified in the order, duly certified by an appropriate officer to be correct, to each of the parties, and two copies to the Registry.

(5) The tribunal shall be deemed to have received a copy of the order on the tenth day after it was sent by mail by the Registry.

15. (1) An order granting an application for leave

(*a*) shall fix the place and language, and a day that is no sooner than thirty days and no later than ninety days after the date of the order, for the hearing of the application for judicial review;

(*b*) shall specify the time limit within which the tribunal is to send copies of its record required under Rule 17;

(*c*) shall specify the time limits within which further materials, if any, including affidavits, transcripts of cross-examinations, and memoranda of argument are to be served and filed;

(*d*) shall specify the time limits within which cross-examinations, if any, on affidavits are to be completed; and

(*e*) may specify any other matter that the judge considers necessary or expedient for the hearing of the application for judicial review.

(2) The Registry shall send to the tribunal a copy of an order granting leave forthwith after it is made.

(3) The tribunal shall be deemed to have received a copy of the order on the tenth day after it was sent by mail by the Registry.

Obtaining Tribunal's Record

17. Upon receipt of an order under Rule 15, a tribunal shall, without delay, prepare a record containing the following, on consecutively numbered pages and in the following order:

(*a*) the decision or order in respect of which the application is made and the written reasons given therefor,

(*b*) all papers relevant to the matter that are in the possession or control of the tribunal,

(*c*) any affidavits, or other documents filed during any such hearing, and

(*d*) a transcript, if any, of any oral testimony given during the hearing, giving rise to the decision or order or other matter that is the subject of the application,

and shall send a copy, duly certified by an appropriate officer to be correct, to each of the parties and two copies to the Registry.

Citizenship and Immigration

Canada

Chapter EC 10

War Crimes and Crimes Against Humanity



Table of Contents

1 BACKGROUND TO CANADA'S WAR CRIMES PROGRAM. 1
2 POLICY INTENT AND APPLICATION 2
3 BCW ORGANIZATION AND MANDATE 3
4 ROLES AND RESPONSIBILITIES 4
5 DESCRIPTION OF WAR CRIMES, GENOCIDE, AND CRIMES AGAINST HUMANITY 5
6 OVERVIEW OF REMEDIES AVAILABLE 7
7 HOW TO IDENTIFY WAR CRIMINALS 9
8 ESTABLISHING INADMISSIBILITY UNDER A19(1)(J) 10
9 ESTABLISHING INADMISSIBILITY UNDER A19(1)(L) 13
10 ELIGIBILITY 16
11 INTERVENTION AND EXCLUSION 20
12 RESOURCES AND SUPPORT AVAILABLE 22

APPENDIX A
WAR CRIMES AMENDMENTS TO THE IMMIGRATION ACT AND REGULATIONS 23

APPENDIX B
CRIMES AGAINST HUMANITY AND WAR CRIMES ACT 24

APPENDIX C
ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT, ARTICLES 6, 7 AND 8 25

APPENDIX D
WAR CRIMES - RELEVANT PROVISIONS OF THE IMMIGRATION ACT AND CITIZENSHIP ACT 30

APPENDIX E
SAMPLE NOTICE TO PERSON CONCERNED. 32

APPENDIX F
WAR CRIMES – SAMPLE REFUSAL LETTERS FOR APPLICATIONS IN CANADA 33

APPENDIX G
SAMPLE 27 REPORTS 35

APPENDIX H
DESIGNATED GOVERNMENTS 36

APPENDIX I
REGIONAL WAR CRIMES UNITS 37

1 BACKGROUND TO CANADA'S WAR CRIMES PROGRAM

In 1986 the Deschênes Commission concluded that there were war criminals living in Canada and suggested ways of dealing with them. In response to the report, the government announced that Canada would not become a safe haven for war criminals and created dedicated war crimes units within the Department of Justice, the RCMP, and Citizenship and Immigration. Although the primary focus at that time was WW II cases, it was acknowledged that modern-day war crminals were making their way to Canada and a series of changes were made to the *Immigration Act* and Regulations beginning in 1987.

> ***Note:*** *Refer to* APPENDIX A *for a chronological listing of these amendments to the Immigration Act and Regulations from 1987 to 2000.*

In 1998 the government introduced changes to its War Crimes Program along with additional resources to strengthen its efforts to deny safe haven to war criminals. The major thrust of these changes was to improve coordination between the three departments delivering Canada's War Crimes Program. An interdepartmental committee was created to ensure that the appropriate remedy was taken in the case of all alleged war criminals in Canada. At the same time an expanded Modern War Crimes Unit was created within the Case Management Branch at NHQ to provide analytical and research capacity as well as legal and intelligence expertise. Regional War Crimes Units were created in the regions, and at CPC Vegreville, and additional resources were allocated to selected missions abroad.

In addition to these national initiatives Canada was and remains very active in international fora, strongly supporting the creation of the International Criminal Tribunals for the former Yugoslavia and Rwanda. In addition, Canada was one of the first states to ratify the Rome Statute and the creation of the International Criminal Court (ICC) by implementing a new Canadian statute, the *Crimes Against Humanity and War Crimes Act*, which was proclaimed on October 23, 2000.

For further background information, copies of the Annual Reports on Canada's War Crimes Program are available on the CIC and Department of Justice web sites and the CIC Intranet.

2 POLICY INTENT AND APPLICATION

The policy of the government is clear. Individuals who have committed, or who are complicit in the commission of a war crime, a crime against humanity, genocide, or any other reprehensible act, regardless of when or where these crimes occurred, are not welcome in Canada.

CIC takes a four-pronged approach in dealing with modern-day war criminals:

- refusing their overseas visa applications as immigrants, refugees, or visitors;
- denying their entry to Canada at ports of entry;
- excluding them from the refugee determination process in Canada; and
- removing them from Canada.

3 BCW ORGANIZATION AND MANDATE

The Modern War Crimes section (BCW) is located within the Case Management Branch. Its mandate is to organize and direct program activities and to be accountable for the CIC portion of Canada's War Crimes Program. A major responsibility of BCW is to ensure that field officers in Canada and abroad have the tools, support and expertise to effectively apply the provisions of the *Immigration Act* pertaining to modern-day war criminals.

The Modern War Crimes Section is involved in the following major activities:

Case management

- provides information and advice to the Minister on contentious and high profile cases;
- provides instructions to the Department of Justice in cases before the courts;
- provides guidance to the field on high profile cases;
- conducts research into the human rights records of regimes and provides advice to the Minister regarding designation under A19(1)(l).

Field support

- develops and delivers training;
- provides policy and legal interpretation;
- develops working tools such as guidelines and procedures, country profiles, screening aids and specific questionnaires.

Research

- conducts research and obtains open source information in response to field queries;
- serves as a central repository of information gathered from media sources and international organizations which concentrate on human rights violations that have occurred in current and recent history including legal, military, refugee, historical, and geographic information;
- maintains gateways to several media monitoring databases;
- maintains an extensive database which is continually being expanded.

Intelligence coordination (BCI)

- acts as a clearing house for all information collected by several government departments;
- gathers classified information concerning governments, countries, specific events, and perpetrators of war crimes;
- provides information to international tribunals and like-minded governments.

Interdepartmental coordination

- Director and senior staff of the Modern War Crimes Unit participate in the Interdepartmental Operations Committee which reviews all cases of war criminals to ensure that the most effective remedy is taken;
- Committee ensures that there is effective coordination between the three departments delivering Canada's War Crimes Program.

4 ROLES AND RESPONSIBILITIES

In order to ensure the effective application of the war crimes provisions in the Immigration Act, effective communication and coordination is required between field offices, regions, and NHQ. The general roles and responsibilities with respect to case processing are as follows:

POEs and CICs

- Identify war criminals or persons suspected of war crimes. This is accomplished through checking the various data bases and lookout systems; by screening applications and by effective interviewing techniques using the profiles, screening aids, and questionnaires provided by the War Crimes Unit;
- Refer such cases to the regional War Crimes Unit as soon as possible in the immigration process;
- Determine admissibility in consultation with the War Crimes Unit as required.

Regional War Crimes Units

- Conduct investigations into cases referred to them by CICs, POEs, NGOs and members of the public;
- Consult with BCW as required for research and intelligence information;
- Decide eligibility and assist POEs in decisions on admissibility;
- Prepare submissions for the Minister's opinion on public interest pursuant to A46.01(1) and on the national interest pursuant to A19(1)(l);
- Prepare cases for 1F(a) exclusion and intervene at the CRDD on behalf of the Minister.

Note: *For a listing of regional war crimes units refer to* APPENDIX I.

National Headquarters (BCW)

- Advise Minister on high profile and sensitive cases;
- Conduct research and obtain intelligence information in response to queries from regional war crimes units and missions abroad;
- Provide assistance and guidance to regional war crimes units and missions abroad on high profile and sensitive cases.

5 DESCRIPTION OF WAR CRIMES, GENOCIDE, AND CRIMES AGAINST HUMANITY

The following descriptions apply:

Crimes against Humanity

Murder, extermination, enslavement, imprisonment, torture, sexual violence, or any other inhumane act or omission that is committed against any civilian population or any identifiable group whether or not the state is at war, and regardless of whether the act or omission is a violation of the territorial law in force at the time. The acts or omissions may have been committed by state officials or private individuals, and against their own nationals or nationals of other states.

Genocide

An act or omission committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, whether committed in times of peace or war, by state officials or private individuals.

War Crimes

Acts or omissions committed during an armed conflict (war between states and civil war) which violate the rules of law as defined by international law. These acts or omissions include the ill-treatment of civilians within occupied territories, the violation and exploitation of individuals and private property, and the torture and execution of prisoners.

Legal definitions of the above will be found in section 4 of the *Crimes against Humanity and War Crimes Act.*

Note: *Refer to* APPENDIX B *for these definitions.*

For a copy of the complete statute refer to the Department of Justice web site at: http://www.canada.justice.gc.ca.

The definitions of these international crimes evolved over time subsequent to various international conventions. Hence there is some overlap between the terms as follows:

Differences between genocide and crimes against humanity

Genocide is considered a particularly reprehensible form of a crime against humanity and as a result every act of genocide is also a crime against humanity; however the converse is not true. The difference between genocide and crimes against humanity is:

- genocide means an act committed with intent to destroy the group, while a crime against humanity means an act committed as part of an widespread or systematic attack, the perpetrator being aware of the widespread or systematic attack;
- the behaviour targeted for genocide is more reprehensible, namely the “destruction in whole or in part of a group”, while for crimes against humanity it is “widespread or systematic attack”;
- the circle of victims for genocide is smaller, namely a "national, ethnic, racial, or religious group” compared to “any civilian population” for crimes against humanity.

Differences between war crimes and crimes against humanity

- isolated reprehensible acts do not amount to crimes against humanity, while even one atrocity can result in the commission of a war crime; this does not mean that a single act can never be a crime against humanity but it has to be shown that this one act was the result of the implementation of widespread or systematic policy;
- war crimes, even committed in a civil war, can only occur when a certain threshold of intensity occurs between the two parties in this conflict; police officers

conducting themselves in a violent manner during riots does not constitute war crimes but could be crimes against humanity;

- crimes against humanity can occur in any setting i.e. international war, civil war, and times of peace; this would mean that a particular atrocity, e.g. the killing of a civilian during a civil war, could be both a war crime and a crime against humanity;
- while some types of atrocities can be both war crimes and crimes against humanity, other acts will fall under one category only, regardless of whether they were committed in times of war or peace, e.g. destruction of certain types of property can be a war crime but can never be a crime against humanity, while persecution is a crime against humanity but not a war crime.

In the application of A19(1)(j), the numbers of persons who have committed war crimes is relatively low. The majority of cases described in A19(1)(j) involve crimes against humanity.

Differences between crimes against humanity/war crimes and terrorist acts

Terrorist acts have a wider application than war crimes/crimes against humanity because:

- they can be committed against both persons and property;
- they can be isolated incidents; they do not have to be committed in a widespread or systematic manner;
- they can be committed both in times of war or peace.

This wider application is also reflected in the *Immigration Act*, which makes inadmissible any person who is or was a member of a terrorist organization. You may have an applicant who fits the description of all three crimes, e.g. the person belonged to a group which conducted a bombing campaign during a civil war. It is preferable to find such a person described in A19(1)(e) or (f) rather than A19(1)(j) as the concept of membership is easier to establish than the concept of complicity established by the Canadian courts in A19(1)(j) cases.

The definitions of war crimes, genocide, and crimes against humanity contained in Canada's *Crimes Against Humanity and War Crimes Act* are derived from the *Rome Statute of the International Criminal Court.*

> ***Note:*** *Refer to* APPENDIX C *which lists articles 6, 7 and 8 of the Rome Statute.*

These articles provide further clarification and examples of what constitutes war crimes, crimes against humanity and genocide.

6 OVERVIEW OF REMEDIES AVAILABLE

In dealing with alleged war criminals and persons who have committed crimes against humanity there are several mechanisms available. The use of one or more of these mechanisms is based on a number of factors including Canada's obligations under domestic and international law, timeliness, effectiveness, and likelihood of success. These mechanisms are:

- criminal prosecution in Canada;
- extradition to a foreign government;
- surrender to an international tribunal;
- revocation of citizenship and deportation;
- denial of visa to persons outside of Canada;
- denial of access (exclusion) to Canada's refugee determination system;
- inquiry and removal under the Immigration Act.

Extradition to a foreign government or surrender to an international tribunal will only occur upon request and will be considered in accordance with Canada's obligations under international law. Criminal prosecution in Canada is taken under Canada's *Crimes Against Humanity and War Crimes Act.* This legislation provides a more effective basis for prosecution than the *Criminal Code* but still presents many challenges in the research and development of evidence and identification and location of witnesses given that a great deal of this case development must be done abroad.

The Canadian statutes which authorize enforcement action against war criminals or persons who have committed genocide or crimes against humanity and a brief description of their relevant provisions are:

The Crimes Against Humanity and War Crimes Act:

- provides for the prosecution of any individual present in Canada for any offence stated in the Act regardless of where the offence occurred;
- creates new offences of genocide, crimes against humanity, war crimes, and breach of responsibility by military commanders and civilian superiors;
- creates new offences to protect the administration of justice at the ICC including the safety of judges and witnesses;
- recognizes the need to provide restitution to victims of offences and provides a mechanism to do so.

The Extradition Act:

- in addition to allowing Canada to extradite to states, allows for the extradition to the International Criminal Tribunals for Rwanda and the former Yugoslavia;
- allows for the use of different forms of evidence that will facilitate extradition to the International Criminal Tribunals and states with a different legal tradition;
- permits the use of video and audio link technology to provide testimony from witnesses located in Canada or abroad;
- establishes clear procedures for the extradition process.

The Immigration Act:

- provides for the examination abroad of immigrants and persons seeking to visit Canada where there is a visitor visa requirement;

- provides two specific grounds of inadmissibility for persons involved in war crimes, genocide or crimes against humanity and outlines procedures for their reporting, inquiry and removal;
- provides for the exclusion from the refugee determination process of persons involved in war crimes, genocide or crimes against humanity;
- limits appeal rights of persons involved in war crimes and crimes against humanity.

The Citizenship Act:

- provides for the revocation of citizenship of persons who have obtained citizenship by fraud or misrepresentation;
- deems that persons who gained admission to Canada by fraud or misrepresentation and subsequently obtained Canadian citizenship are considered to have gained citizenship by fraud or misrepresentation;
- provides that citizenship shall not be granted where the person is under investigation by the RCMP, the Minister of Justice, or the Canadian Security Intelligence Service.

> ***Note:*** *For the texts of the relevant provisions of the Immigration Act and the Citizenship Act refer to* APPENDIX D.

The complete texts of the four statutes will be found on the Department of Justice web site at: http://www.canada.justice.gc.ca

7 HOW TO IDENTIFY WAR CRIMINALS

War criminals and persons who have committed genocide or crimes against humanity will be detected in the following manner:

- through verification of data bases to indicate previous dealings with the department overseas and in Canada;
- through examination at ports of entry;
- through examination by war crimes units of cases referred to them;
- through examination of persons being processed to landing;
- during the refugee determination process;
- within the community itself by persons who identify war criminals, in some cases having been victims of atrocities.

General Profile

When reviewing an application for admission to Canada, applicants who are from countries where there is/was internal turmoil, genocide, war, or where human rights abuses are/were widespread and who are/were one of the following qualify for more in-depth investigation:

- senior government officials, diplomats, or employees of the government;
- current and former military, para-military, security, intelligence and police personnel or individuals employed in technical or scientific backgrounds related to chemical or biological weapons;
- close family relatives of heads of government/state;
- persons suspected of being a member of an organization that is involved in terrorism or crimes against humanity;
- members of armed/opposition/political (guerrilla) groups.

All offices which are involved in the assessment of admissibility, including Vegreville, should apply the general profile to all cases being processed towards landing or being examined for admissibility. In cases where the applicant appears to meet the profile, the case should be referred to the regional War Crimes Unit for further investigation.

Specific Questionnaires

BCW/BCI have developed a series of specific questionnaires which should be employed as appropriate to the situation. Completion of these questionnaires may provide further information to assist you in determining whether the person is inadmissible or whether more in-depth investigation is required. These questionnaires are available in MWCS. (Refer to section 10.12 for information on the Modern War Crimes System.) For offices involved in assessing admissibility that do not have access to MWCS, questionnaires can be obtained from your regional War Crimes Unit or BCW.

8 ESTABLISHING INADMISSIBILITY UNDER A19(1)(J)

Legal Authority

Paragraph 19(1)(j) of the *Immigration Act,* amended on October 23, 2000 reads as follows:

(j) persons who there are reasonable grounds to believe have committed an offence referred to in any of sections 4 to 7 of the Crimes Against Humanity and War Crimes Act.

This includes the following:

- persons who commit an offence;
- persons who attempt to commit an offence;
- persons involved in aiding and abetting, encouraging, or being involved in the planning of an offence;
- persons who are members of an organization whose members committed an offence, the higher the position occupied by the person the more likely that the person would be involved;
- persons who are complicit when an offence is committed.

Complicity

A person is considered complicit if, while aware of the commission of atrocities, the person contributes, directly or indirectly, remotely or immediately, to their occurrence. Active or formal membership in the organization responsible for committing the atrocities is not required. For example, the act of guarding an execution site even if one had not participated in an execution constitutes complicity.

Case law in Canadian courts has determined that complicity can be found in the following three situations:

- being present at the scene of a war crime, a crime against humanity or genocide;
- being a member of an organization involved in such crimes; or
- being a member of an organization with a limited brutal purpose.

Complicity – Brutal (Limited Purpose) Organizations

The Federal Court has stated that when looking at membership in an organization, the first step is to look at the type of organization. If the main purpose of the organization is involvement in genocide, war crimes, or crimes against humanity, membership in such an organization is usually sufficient to make the person complicit. (Examples are secret police, security organizations, terrorist groups, death squads, or security courts.)

A brutal limited purpose organization can be described as:

- primarily directed to a limited brutal purpose;
- having perpetrated international offences in the ongoing and everyday course of its activities and its purpose is limited and brutal;
- having the sole intent and purpose of violently and brutally bringing about a course of events; or
- achieving its main purpose by means of crimes against humanity or war crimes.

Second, involvement with the organization must be established. Active or formal membership in the organization responsible for committing the atrocities is not required. In order to establish involvement one or more of the following elements must be present:

- person has devoted himself full time or almost full time to the activities of the organization;
- person is associated with the members of the organization (the longer the period of time, the stronger the involvement); or
- person joins voluntarily and remains in the group to add his personal efforts to the group's cause.

Third, it is essential that the person must have knowledge of the limited brutal purpose of the organization. This knowledge may be inferred from the types of activities the organization is involved with. It may be presumed that if a person is involved with an organization, he is aware of the brutal nature of this organization; however this presumption is rebuttable.

Complicity – Non Brutal Organizations

If the commission of war crimes or crimes against humanity is not the main function of an organization and is not a part of its regular operations but incidental to its mandate, the following three elements must be considered:

- the type of organization;
- the activities of the person;
- the intention of that person in relation to the organization.

The types of organizations that could be involved are:

- regular armed forces;
- militias;
- ministries of the interior including prisons;
- regular police forces;
- liberation movements and political parties;
- other state structures which have the capacity to affect large numbers of people such as ministries and courts.

Canadian courts have determined that the following activities constitute complicity:

- handing over people to organizations (brutal or non-brutal) with the knowledge that they would come to harm;
- providing information to organizations on individuals which result in harm to these individuals;
- providing support functions such an being an intelligence officer, a driver, or a body guard to members of the organization;
- assisting in increasing the effectiveness of a limited brutal purpose organization, such as being a policeman in charge of political prisoners at a military hospital or being in charge of legal training with a police force.

Elements which may clarify intent are:

- knowledge of war crimes or crimes against humanity; one must have known about the activities committed by the organization or been willfully blind to them;
- the greater the number of atrocities committed by the organization the more complicity may be assumed;
- the longer the duration of time that one belongs to the organization the more likely complicity or direct involvement may be assumed;

- having a common purpose; if it can be established that a person has refused to participate in or has complained about the commission of atrocities by others, this person does not share their common purpose and lacks intent; if the person has been disciplined as a result of the refusal or complaint or resigned from the organization the lack of intent is even stronger;
- the circumstances surrounding dissociation such as the earliest possible time the person had to leave, the reason for leaving, and the consequences of leaving the organization, if any.

Defences

A common defence of a person who committed a war crime, genocide, or a crime against humanity is based on the concept of superior orders, i.e. as required by his position he had to follow orders from the government or a superior officer. Although this defence may be used in arguing for a lighter sentence in a criminal prosecution it is not relevant for the purposes of the *Immigration Act* and cannot overcome the ground of inadmissibility under A19(1)(j).

The only defence that has been considered by the Courts (in the context of refugee and immigration law) is that the person acted under duress. The defence of duress can be accepted if the following three conditions are met:

- it results from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person;
- the person acts necessarily and reasonably to avoid this threat;
- the person does not intend to cause a greater harm than the one sought to be avoided.

When this defence is offered and it appears that the ground of inadmissibility may be overcome, it is recommended that the matter be referred to BCW for legal advice prior to rendering a decision on admissibility.

Cases involving prior exclusion by the CRDD

The Federal Court of Appeal has established that exclusion under 1F(a) is equivalent to a finding of inadmissibility under A19(1)(j). Therefore, where the applicant has previously been in Canada and you have evidence that the CRDD has excluded the applicant from refugee determination under 1F(a), in most instances there is no need to conduct any further investigation to establish inadmissibility under A19(1)(j).

There will be situations where the person provides you with additional information that was not available at the time of the CRDD exclusion. Any such additional information must be accepted and considered. Where relevant and credible evidence is brought forward that may bring into doubt the validity of the 1F(a) exclusion, the matter should be referred to BCW for advice.

Note: *For samples of refusal letters under A19(1)(j) refer to* APPENDIX F.

Note: *For samples of reports under A27 refer to* APPENDIX G.

9 ESTABLISHING INADMISSIBILITY UNDER A19(1)(L)

Legal Authority

Paragraph 19(1)(l) came into force on February 1, 1993 creating a new inadmissible class. It was amended on October 23, 2000 with the proclamation of the *Crimes Against Humanity and War Crimes Act.* It reads as follows:

(l) persons who are or were senior members of or senior officials in the service of a government that is or was, in the opinion of the Minister, engaged in terrorism, systematic or gross human rights violations, or any act or omission that would be an offence under any of sections 4 to 7 of the Crimes Against Humanity and War Crimes Act, except persons who have satisfied the Minister that their admission would not be detrimental to the national interest.

The meaning of "senior members of or officials in the service of a government" is further clarified by subsection 19(1.1) which reads:

For the purposes of paragraph (1)(l), "senior members of or senior officials in the service of a government" means persons who, by virtue of the position they hold or have held, are or were able to exert a significant influence on the exercise of government power and, without limiting its generality, includes

(a) heads of state or government;

(b) members of the cabinet or governing council;

(c) senior advisors to persons described in paragraph (a) or (b);

(d) senior members of the public service;

(e) senior members of the military and of the intelligence and internal security apparatus;

(f) ambassadors and senior diplomatic officials; and

(g) members of the judiciary.

Policy Intent

The rationale for these provisions is that although such persons may never have personally participated in terrorism or gross human rights abuses, they nevertheless must share and accept the responsibility for such practices.

Designation of Regimes

A person cannot be described in A19(1)(l) unless the government concerned has been designated by the Minister as a regime that has been involved in terrorism, systematic or gross human rights violations or any act or omission that would be an offence under any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act.*

> ***Note:*** *For a listing of governments that have been designated refer to* APPENDIX H.

BCW and BCI have the responsibility for researching the human rights records of regimes and providing a recommendation to the Minister that a particular government should be designated. This recommendation is provided in consultation with International Region and the Department of Foreign Affairs and International Trade. The following are among the factors that will be considered in deciding whether a regime should be designated:

- condemnation by other countries and organizations;
- the overall position of the Canadian government, including whether a refugee claim by a senior member of the government would undermine Canada's strong position on human rights;

- the nature of the human rights violations;
- immigration concerns such as the number of persons coming from that specific country and whether there might be a concern for the protection of Canadian society.

Requirements to establish inadmissibility

Persons who are described in A19(1)(l) may be broken down into three categories each with its own evidentiary requirements as per the following table:

CATEGORY	EVIDENCE REQUIRED
1. Persons described in 19(1.1)(a),(b), (f-ambassadors only), and (g)	Designation of regime Proof of position held
2. Persons described in 19(1.1)(c),(d),(e), and (f-senior diplomatic officials)	Designation of regime Proof of position held Proof that position senior
3. Persons not described in 19(1.1)	Designation of regime Proof that person could exercise significant influence

Category 1: a person in this group is presumed to be or to have been able to exert significant influence on the exercise of that government's power. This is a non-rebuttable presumption which has been upheld by the Federal Court of Appeal. In other words, the fact that a person is or was an official in this category is determinative of the allegation. Aside from the designation and proof that the person holds or held such a position, no further evidence is required to establish inadmissibility.

Category 2: in addition to the above requirements, it must be established that the position the person holds or held is a senior one. In order to establish that the person's position was senior, the position should be related to the hierarchy in which the functionary operates. Copies of organization charts can be located from the Europa World Year Book, Encyclopedia of the Third World, Country Reports on Human Rights Practices (US Department of State) and the Modern War Crimes System (MWCS) database. If it can be demonstrated that the position is in the top half of the organization, the position can be considered senior. This can be further established by evidence of the responsibilities attached to the position and the type of work actually done or the types of decisions made (if not by the applicant then by holders of similar positions).

There is no definition of "senior" in the Immigration Act and no case law from the Federal Court. However, in considering this issue in relation to a military position, a tribunal of the Immigration Appeal Division determined that:

> "A senior member of the military would be a person occupying a high position in the military and would be a person of more advanced standing and often of comparatively long service. Advanced standing would be reflected in the responsibilities given to the person and the positions occupied by the person's immediate superiors."

Category 3: in addition to the designation of the regime, it must be established that the person, although not holding a formal position is or was able to exercise significant influence on the actions or policies of the regime. A person who assists in either promoting or sustaining a government designated by the Minister can be characterized as having significant influence over its policies or actions.

The concept of significant influence is not limited to persons who made final decisions on behalf of the regime; it also applies to persons who assisted in the formulation of

these policies, e.g. by providing advice, as well as persons responsible for carrying them out. If a person conducts activities which directly or indirectly allow the regime to implement its policies, the test for significant influence is met. The phrase "government power" in A19(1.1) is not limited to powers exercised by central agencies or departments but can also refer to entities which exercise power at the local level.

Once it is established that the person exerted significant influence, the extent or degree of this influence is not relevant to the finding of inadmissibility; however they are factors that could be considered by the Minister when deciding whether the admission of the person would not be detrimental to the national interest.

> ***Note:*** *For policy and procedures related to national interest considerations refer to* OP 17, Section 5.5.

Opportunity for person to be heard

If you are contemplating the refusal of a person under A19(1)(l), the applicant must be given an opportunity to demonstrate that his position is not senior as contemplated by A19(1.1) (category 2) or that he did not or could not exert significant influence on his government's actions, decisions, or policies (category 3). This can be done by mail or by personal interview. In either case, the applicant should be provided with copies of all unclassified documents in possession of the visa officer that will be considered in assessing admissibility.

Consultation with BCW

Officers should be aware of the sensitive nature of A19(1)(l) and the need for careful and thorough consideration of all relevant information. It is not intended that officers should cast the net so widely that all employees of a designated regime are considered inadmissible. Before considering the refusal of an applicant whose position is not listed in A19(1.1), officers are requested to consult with BCW.

> ***Note:*** *For samples of refusal letters under A19(1)(l) refer to* APPENDIX F.
>
> ***Note:*** *For samples of reports under A27 refer to* APPENDIX G.

10 ELIGIBILITY

The following guidelines concerning eligibility pertain specifically to war crimes cases. They should be read in conjunction with the guidelines on eligibility contained in EC 3, Section 4.

Eligibility

Persons involved in war crimes, genocide, and crimes against humanity may be ineligible to have their refugee claims considered. This exclusion is applied at the eligibility determination stage by a senior immigration officer. A favourable eligibility decision can be re-visited at any time if the original decision was based on fraudulent or misleading information.

In order for an SIO to determine that the person is ineligible to make a claim the following two requirements must be met:

- The person must be found by an adjudicator to be described in A19(1)(j) or (l);
- The Minister must have determined that it would be contrary to the public interest to allow the claim to proceed.

The relevant provision of the Act reads as follows:

46.01(1) **Access Criteria** – A person who claims to be a Convention refugee is not eligible to have the claim determined by the Refugee Division if the person

(e) has been determined by the adjudicator to be

(ii) a person described in paragraph 19(1)(e), (f), (g), (j), (k), or (l) and the Minister is of the opinion that it would be contrary to the public interest to have the claim determined under this Act,

Public Interest

The consideration of public interest involves the assessment and balancing of the specific nature of the person's involvement in war crimes, genocide, or crimes against humanity against whether the admission of the person could be offensive to members of the Canadian public or might represent a potential risk to the Canadian public.

Where it is the intention to seek the Minister's opinion, the role of the regional War Crimes Unit in such cases is to:

- send a notice to the person concerned as outlined in APPENDIX E;
- verify (to the extent possible) the information provided by the person;
- obtain any other information that may be required and provide the person with an opportunity to respond;
- complete and forward to BCW the Request for Minister's Opinion Report.

In preparing the Request for the Minister's Opinion Report, regional war crimes units should be guided by the following principles.

Procedural Fairness

There is extensive case law from the Federal Court on procedural fairness in immigration processing. It is well established that applicants are entitled to know the test they have to meet, to have a meaningful opportunity to present the various types of evidence relevant to their case, to provide a response to the information obtained by the officer and to have their evidence fully and fairly considered by the decision-maker. The evolution of this doctrine in immigration processing has resulted in the following rules for the processing of requests for the Minister's opinion.

- The Minister must make the decision on complete information. Therefore all documents provided by the applicant must be forwarded and presented to the Minister

for consideration. It is not acceptable that the contents of such documentation be summarized in a memorandum to the Minister without attaching the primary documentation.

- Except for documentation that must be protected for security reasons, the applicant is entitled to receive and comment on any relevant documents obtained by the officer that will be considered by the Minister. (Where information must be protected contact BCW for guidance).
- The person is entitled to be advised of issues raised by the officer and to respond to those issues.

The Request for the Minister's Opinion Report should consist of three parts as follows:

- The specific nature of the involvement in war crimes, genocide, or crimes against humanity and considerations concerning whether the admission might be offensive to Canadians or might pose a risk to the public;
- Details of immigration status and H&C considerations;
- Recommendation.

In order to address the first part the following should be addressed (not all questions will be applicable):

- Is there satisfactory evidence that the person does not represent a danger to the public?
- Was the activity an isolated event? If not, over what period of time did they occur?
- When did the activities occur?
- Was violence involved?
- Was the person personally involved or complicit in atrocities?
- Does the person show remorse for the activities?
- Has the person been forthright concerning his role in these activities or has he tried to minimize his role?
- Is the regime internationally recognized as one that uses violence to achieve its goals?
- What was the length of time that the applicant was a member of the regime?
- Is the regime still involved in criminal or violent activities?
- What was the role or position of the person within the regime?
- Did the person benefit from his membership or his involvement with the regime?
- Is there evidence to indicate that the person was not aware of the atrocities committed by the regime?
- What evidence exists to show that ties with the regime have been severed?
- What are the details concerning dissociation from the regime? Did the person dissociate himself from the regime at the first opportunity? Why?
- Is the person currently associated with any individuals still involved in the regime?
- Is there any indication that the person may be benefiting from assets obtained while a member of the regime e.g. is the person's lifestyle consistent with his personal net worth?
- Is there any indication that the person might be benefiting from previous membership in the regime e.g. does the person's status in the community demonstrate any special treatment due to former membership in the regime?

- What is the person's current attitude towards the regime, his membership, and his activities on behalf of the regime?
- Does the person show any remorse for his membership or the activities of the regime?
- What is the person's current attitude towards violence to achieve political change?
- What is the person's attitude towards the rule of law and democratic institutions as they are understood in Canada?

The second part of the submission should deal with immigration and humanitarian and compassionate considerations. This includes:

- Details on immigration status;
- Canadian interest including family in Canada and abroad;
- Risk assessment should the person be required to return (officers may wish to consult a PCDO);
- Humanitarian and compassionate considerations.

The third part of the submission should contain a recommendation with supporting rationale. The rationale should demonstrate a thorough assessment and balancing of all factors in accordance with the definition of public interest stated above.

When submitting the request you should include copies of all relevant documents. This may include:

- copy of the 20(1) or 27 report;
- information from the Personal Information Form (PIF);
- CSIS/RCMP intelligence reports;
- reports from other sources e.g. Human Rights Organizations;
- media reports;
- CIC research results on country conditions;
- person's submissions;
- medical/psychological reports;
- any other relevant information.

The submission with all supporting documents should be sent to BCW by mail to the following address:

Director Modern War Crimes
Case Management Branch
Citizenship and Immigration
Jean Edmonds North Tower
300 Slater Street
Ottawa, Ont. K1A 1L1

Role of BCW

Upon receipt of the above, BCW will:

- review the request and all documentation;
- conduct any further research that may be required;
- prepare and forward a Request for Minister's opinion (RMO);
- advise the War Crimes Unit of the Minister's decision.

Upon receipt of the Minister's decision you will be advised. Should the Minister decide that it is not in the public interest to have the claim determined, you will be provided with an official notification signed by the Minister. Upon receipt of this notification, and a ruling by the adjudicator that the person is described in A19(1)(j) or (l) an SIO can then make a decision on eligibility.

Re-determination of Eligibility.

Where there is a positive decision on eligibility and it becomes apparent that the decision was based on fraud, misrepresentation, or omission of a material fact and the person would not otherwise have been eligible to have the claim referred, an SIO can revisit the decision and render the person ineligible to have the claim considered. Re-determination of eligibility can occur at any time including after a decision by the CRDD on refugee determination. On being notified, the CRDD must terminate consideration of the claim. If a decision has been rendered it is considered null and void. The authority for this procedure is found in A46.4(1) and (2).

11 INTERVENTION AND EXCLUSION

The following guidelines concerning intervention and exclusion pertain specifically to war crimes cases. They should be read in conjunction with the guidelines on the Minister's role at CRDD hearings, contained in OP 17, Section 18, and the guidelines on exclusion, EC 5, Section 19 and EC 5, APPENDIX J.

There will be instances where war crimes information not involving misrepresentation comes to light after the referral of the case to the CRDD. In such cases the Minister may request permission to intervene at the refugee determination hearing pursuant to A69.1(5) and argue for exclusion pursuant to article 1F(a) of the Convention.

Article 1F(a) reads as follows:

F. The provisions of this convention shall not apply to any person with respect to whom there are serious reasons for considering that:

> (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

In order to successfully argue exclusion there are two elements to be established:

- serious grounds for considering; and
- the person has committed;

  a crime against humanity as defined in article 7 of the Rome Statute *(see* APPENDIX C*)* or

  a crime against peace [crimes against peace (or the crime of aggression as it is now known in international law) has been defined by the Nuremberg International Military Tribunal as "planning, initiation, or waging of war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing"]; or

  a war crime as defined in article 8 of the Rome Statute *(see* APPENDIX C*)*.

Comparison Between A19(1)(j) and Article 1F(a)

There are similarities and differences between these two provisions as follows:

Similarities

- The evidentiary test to be applied in A19(1)(j) cases is "reasonable grounds". The test to be applied in 1F(a) cases is "serious grounds for considering". The Federal Court of Appeal has ruled that the meaning is the same.
- **Note:** For more information concerning the meaning of 'reasonable grounds' refer to OP 17, Section 2.2.
- The concept of complicity applies equally to A19(1)(j) and article 1F(a).

Differences

- A19(1)(j) includes genocide but does not include crimes against peace; article 1F(a) does not mention genocide but includes crimes against peace. It should be noted that the extensive listing of crimes against humanity in article 7 of the Rome Statute also describe acts of genocide.
- A19(1)(j) allegations are argued before an adjudicator at an inquiry; article 1F(a) is argued before the CRDD;
- Article 1F(a) has application at only one procedure under the Act, i.e. exclusion before the CRDD; A19(1)(j) has application at several procedures under the Act, namely;
  - Reporting permanent residents, A27(1)(g) and (h)

- Reporting non-residents, A27(2)(a)
- Deportation order required, A32(5)
- Deportation order required, A32(7)
- Report by Minister and Solicitor General to Review Committee, A39(2)
- Filing of opinion with adjudicator, A39(4)
- Issuance of security certificate, permanent residents, A40(1)
- Issuance of certificate, non-residents, A40.1(1)
- Certificate is conclusive proof of allegations, A40.1(7)
- Minister's opinion that determination of refugee claim is not in the public interest, A46.01(1)(e)(ii)
- War criminals found to be refugees cannot be granted permanent residence, A46.04(1)
- Execution of removal order stayed for seven days, A49(1)(d)
- Convention refugees can with removed with Minister's opinion that person constitutes danger to security, A53(1)(b)
- Cannot appeal removal order to IAD, A70(4)(b)
- Report to Review Committee in sponsored cases, A81(2)(b)

- A19(1)(j) cannot be used for persons who became permanent residents or committed war crimes before October 30, 1987, [A27(1)(g) and (h)]; there are no time limits on the application of article 1F(a).

12 RESOURCES AND SUPPORT AVAILABLE

Modern War Crimes System (MWCS)

The MWCS is intended to be an extensive database of war crimes related information compiled by BCW and provides internet access to much of the open-source information currently held in the Resource Centre. Much of the information contained in MWCS is the result of previous queries investigated by the Research Centre and as such the database is under constant expansion. This includes information on human rights violations, jurisprudence, organizations, movements, and geography. The system indexes and cross-references by name, place, date and event. Full text documents are also available including operational procedures, standardized forms and questionnaires, updates on current events and online training for existing and new functions. MWCS will be available to all missions abroad, war crimes units in Canada, and ports of entry during 2002.

Internet Resources

Extensive open-source information is available through the internet to assist you in researching current and historical information from a wide variety of sources. Officers are encouraged to conduct their own research and identify further links or sites that provide useful information. These links and comments as to their usefulness should be forwarded to BCW to assist in keeping the list of internet addresses current.

***Note:** A listing of current of internet addresses will be found in MWCS.*

Research Centre

Officers are expected to conduct their own research using the MWCS. Where MWCS does not have the required information or there is a need to access classified information, a query should be made to the regional War Crimes Unit who will direct the query to the BCW Research Centre if necessary.

General program assistance

As indicated throughout this chapter there will be situations where policy or legal advice is required or assistance in dealing with problematic or high profile cases. In such instances you should seek advice from the regional War Crimes Unit who will consult with BCW if required. BCW will review the request and forward it to the appropriate analyst, researcher, or the legal adviser.

Emergency Situations

Situations may arise where immediate assistance is be required. BCW staff are on call duty 24x365 for emergency situations. Should a situation arise where war crimes expertise is required immediately and local or regional assistance is not available you may contact the Immigration Warrant Response Centre at 613-954-2344 who will forward your request to the appropriate BCW personnel.

APPENDIX A

WAR CRIMES AMENDMENTS TO THE IMMIGRATION ACT AND REGULATIONS

October 30, 1987 – Bill C-71 created 19(1)(j), a new ground of inadmissibility pertaining specifically to war crimes and crimes against humanity.

January 1, 1989 – Bill C-55 added to the *Immigration Act* the exclusionary clauses of the 1951 Convention Relating to the Status of Refugees. Article 1F(a) of the Convention excludes protection under the Convention to persons who have committed or are complicit in war crimes or crimes against humanity.

February 1, 1993 – Bill C-86 created 19(1)(l), a new ground of inadmissibility pertaining to individuals who are or were senior members of regimes designated by the Minister as having committed gross human rights violations or war crimes.

July 10, 1995 – Bill C-44 enabled senior immigration officers to render ineligible decisions at any stage of the refugee determination process. This included the authority to declare a positive refugee decision null and void if it was determined that the original decision on eligibility was based on misrepresentation.

May 1, 1997 – Amendments to the Post Determination Refugee Claimants in Canada Class (PDRCC) and Deferred Removal Orders Class (DROC) regulations restricted persons excluded under Article 1F(a) of the Convention from accessing these reviews.

June 17, 1999 – Bill C-40 introduced changes to the *Immigration Act* concurrent with the proclamation of the new *Extradition Act*. These included three new provisions 69.1(12), (14), and (15) designed to harmonize the extradition and refugee determination processes.

October 23, 2000 – Bill C-19 modified the description of A19(1)(j) and (l) concurrent with the proclamation of the *Crimes Against Humanity and War Crimes Act*. The grounds of inadmissibility are now based on the definitions of war crimes, crimes against humanity, and genocide contained in the new act.

APPENDIX B

CRIMES AGAINST HUMANITY AND WAR CRIMES ACT

4.(1) Every person is guilty of an indictable offence who commits

(a) genocide;

(b) a crime against humanity; or

(c) a war crime.

(1.1) Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an offence referred to in subsection (1) is guilty of an indictable offence,

(2) Every person who commits an offence under subsection (1) or (1.1)

(a) shall be sentenced to imprisonment for life, if an intentional killing forms the basis of the offence; and

(b) is liable to imprisonment for life, in any other case.

(3) The definitions in this subsection apply in this section.

"crime against humanity" means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

"genocide" means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that, at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

"war crime" means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

(4) For greater certainty, crimes described in Articles 6 and 7 and paragraph 2 of Article 8 of the Rome Statute are, as of July 17, 1998, crimes according to customary international law. This does not limit or prejudice in any way the application of existing or developing rules of international law.

APPENDIX C

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT, ARTICLES 6, 7 AND 8

Article 6
Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group

Article 7
Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity;

(h) "The crime of apartheid" means inhumane acts of character similar to those referred to in paragraph 1, committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack;

(b) Extermination" includes the intentional infliction of conditions of life, **inter alia** the deprivation of access to food and medicine, calculated to bring about the destruction or part of a population;

(c) "Enslavement" means the exercise of any or all the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement, of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

Article 8
War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as a part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Willful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter

of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefined and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilisation, or any other form of sexual violence also constituting grave breach of the Geneva Conventions;

(xxiii) Utilising the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical to and transport, and personnel using the distinctive emblems of Geneva Conventions in conformity with international law.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed **hors de combat** by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generallyr recognised as indispensable.

(d) Paragraph 2(c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given objects under the law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(f), enforced sterilisation, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.

(f) Paragraph 2(e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organised armed groups or between such groups.

APPENDIX D

WAR CRIMES - RELEVANT PROVISIONS OF THE IMMIGRATION ACT AND CITIZENSHIP ACT

Immigration Act

3. **Objectives** – It is hereby declared that Canadian immigration policy and the rules and regulations made under this Act shall be designed and administered in such a manner as to promote the domestic and international interests of Canada recognizing the need

(i) to maintain and protect the health, safety, and good order of Canadian society;

19. (1) **Inadmissible persons** – No person shall be granted admission who is a member of any of the following classes:

(j) persons who there are reasonable grounds to believe have committed an offence referred to in any of sections 4 to 7 of the Crimes Against Humanity and War Crimes Act;

(*l*) persons who are or were senior members of, or senior officials in the service of a government that is or was, in the opinion of the Minister, engaged in terrorism, systematic or gross human rights violations or any act or omission that would be an offence under any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act,* except persons who have satisfied the Minister that their admission would not be detrimental to the national interest.

1.1 **Meaning of "Senior Members of or Senior Officials in the Service of a Government**" – For the purposes of paragraph (1)(l) "senior members of or senior officials in the service of a government" means persons who, by virtue of the position they hold or have held, are or were able to exert a significant influence on the exercise of government power and, without limiting its generality, includes

(*a*) heads of state or government;

(*b*) members of the cabinet or governing council;

(*c*) senior advisors to persons described in paragraph (a) or (b);

(*d*) senior members of the public service;

(*e*) senior members of the military and of the intelligence and internal security apparatus;

(*f*) ambassadors and senior diplomatic officials; and

(g) members of the judiciary.

27(1) **Reports on permanent residents** – An immigration officer or a peace officer shall forward a written report to the Deputy Minister setting out the details of any information in the possession of the immigration officer or peace officer indicating that a permanent resident is a person who

(a) is a member of an inadmissible class described in paragraph 19(1)*(c.2), (d), (e), (f), (g), (k),* or *(l)*;

(g) is a member of the inadmissible class described in paragraph 19(1)*(j)* who was granted landing subsequent to the coming into force of that paragraph; or

(h) became a member of the inadmissible class described in paragraph 19(1)*(j)* who was granted landing subsequent to the coming into force of that paragraph.

27(2) **Reports on visitors and other persons** – An immigration officer or a peace officer shall, unless the person has been arrested pursuant to subsection 103(2), forward a written report to the Deputy Minister setting out the details of any information in the possession of the immigration officer or peace officer indicating that a person in Canada, other than a Canadian citizen or permanent resident, is a person who

(*g*) came into Canada or remains in Canada with a false or improperly obtained passport, visa or other document pertaining to that person's admission or by reason of any fraudulent or improper means or misrepresentation of any material fact, whether exercised or made by himself or by any other person;

(*i*) ceased to be a Canadian citizen pursuant to subsection 10(1) of the *Citizenship Act* in the circumstances described in subsection 10(2) of that Act;

46.01(1) **Access Criteria** – A person who claims to be a Convention Refugee is not eligible to have the claim determined by the Refugee Division if the person

(*e*) has been determined by an adjudicator to be

(ii) a person described in paragraph 19(1)(*e*),(*f*), (*g*), (*j*), (*k*), or (*l*) and the Minister is of the opinion that it would be contrary to the public interest to have the claim determined under this Act.

Schedule – Sections E and F of Article 1 of the United Nations Convention Relating to the Status of Refugees

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious grounds for considering that:

(*a*) he has committed a crime against peace, a war crime, or a crime against humanity as defined in the international instruments drawn up to make provision in respect of such crimes;

Citizenship Act

10.(1) **Order in cases of fraud** – Subject to section 18 but notwithstanding any other section of this Act, where the Governor in Council, on a report from the Minister, is satisfied that any person has obtained, retained, renounced or resumed citizenship under this Act by false representation or fraud or by knowingly concealing material circumstances,

(*a*) the person ceases to be a citizen, or

(*b*) the renunciation of citizenship by the person shall be deemed to have had no effect, as of such date as may be fixed by order of the Governor in Council with respect thereto.

(2) **Presumption** – A person shall be deemed to have obtained citizenship by false representation or fraud or by knowingly concealing material circumstances if the person was lawfully admitted to Canada for permanent residence by false representation or fraud or by knowingly concealing material circumstances and, because of that admission, the person subsequently obtained citizenship.

18.(1) **Notice to person in respect of revocation** – The Minister shall not make a report under section 10 unless the Minister has given notice of his intention to do so to the person in respect of whom the report is to be made and

(*a*) that person does not, within thirty days after the day on which the notice is sent, request that the Minister refer the case to the Court (Federal Court, Trial Division); or

(*b*) that person does so request and the Court decides that the person has obtained, retained, renounced or resumed citizenship by false representation or fraud or by knowingly concealing material circumstances.

(2) **Nature of Notice** – The notice referred to in subsection (1) shall state that the person in respect of whom the report is to be made may, within thirty days after the day on which the notice is sent to him, request that the Minister refer the case to the Court, and such notice is sufficient if it is sent by registered mail to the person at his latest known address.

(3) **Decision Final** – A decision of the Court made under subsection (1) is final and, notwithstanding any other Act of Parliament, no appeal lies therefrom.

22. (1) **Prohibition** – Notwithstanding anything in this Act, a person shall not be granted citizenship under section 5 or subsection 11(1) or administered the oath of citizenship

(c) while the person is under investigation by the Minister of Justice, the Royal Canadian Mounted Police or the Canadian Security Intelligence Service, or is charged with, on trial for, subject to or a party to an appeal relating to, an offence under any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act;*

(d) if the person has been convicted of an offence under any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act;*

APPENDIX E

SAMPLE NOTICE TO PERSON CONCERNED

Dear----:

Re: Notice of intention to request the Minister's opinion pursuant to subparagraph 46.01(1)(e)(ii) of the Immigration Act

This is to inform you that Citizenship and Immigration Canada (CIC) intends to request the opinion of the Minister that it would be contrary to the public interest to have your claim for refugee status proceed under the Immigration Act.

The request for this opinion is based on information that you may be a person described in paragraph 19(1)(j) of the Act. If you are found to be so described by an adjudicator and the Minister issues his/her opinion that it would not be in the public interest to have the claim proceed, then you would be determined ineligible to have your claim determined. If the Minister issues his/her opinion and you are subsequently not found by an adjudicator to be a person described in paragraph 19(1)(j) of the Immigration Act, then the Minister's opinion would have no effect and your claim could continue.

The consideration of public interest involves the assessment and balancing of the specific nature of your involvement in *(specify war crimes, genocide, or crimes against humanity)* against whether your admission to Canada could be offensive to members of the Canadian public or might represent a potential risk to the Canadian public. As the consequence of this opinion could result in denying your refugee claim, the Minister will also consider any risks that you could be exposed to should you return to the country from which you came as well as any humanitarian and compassionate factors. The book of inquiry documents and other relevant documentation are enclosed for your information and will be forwarded to the Minister with our request for an opinion pursuant to subparagraph 46.01(1)(e)(ii) of the Act.

CIC may also refer to your refugee claim material and to the most recent and current country information available at the Immigration and Refugee Board Documentation Centres.

Before the Minister forms his/her opinion you are entitled to make written submissions and submit any documentation that you believe is relevant. Your submission should be guided by the public interest considerations mentioned above. Please note that your submission and any documentation must be in one of Canada's official languages and must be received by this office within 15 days of receipt of this letter. Your submissions and supporting documents will be considered by the Minister before a decision is rendered.

You will be informed in writing of the Minister's decision. Please direct your submissions and any questions to this office.

Sincerely,

APPENDIX F

WAR CRIMES – SAMPLE REFUSAL LETTERS FOR APPLICATIONS IN CANADA

IP5 provides guidelines on the processing of H&C applications from within Canada. IP5, APPENDIX C *provides sample letters for the processing and refusal of these applications. The following specifics should be included in the sample refusal letter outlined in* IP5, APPENDIX C.

A19(1)(j)

Your application is refused because there is reason to believe that you are a member of the inadmissible class of persons described in paragraph 19(1)(j) of the *Immigration Act* namely:

> (j) persons who there are reasonable grounds to believe have committed an offence referred to in any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act;*

Sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act* state in part:

> "crime against humanity" means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.
>
> "genocide" means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that, at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not constitutes a contravention of the law in force at the time and in the place of its commission.
>
> "war crime" means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

Specifically, there is reason to believe that, in (*specify time period*), while *(specify active in or member of organization including in which country*) you committed (*if personal involvement*) /were complicit in (*if no personal involvement)* the following war crime, genocide or crime against humanity: (*specify the activity plus short description from above; for further specifics refer to* APPENDIX C*)* against (*identify the person or group of persons who has been victimized by the person concerned or by the organization to which he belonged*).

(For persons who were previously excluded from refugee determination by the CRDD for 1F(a) add)

You were previously excluded from entitlement to protection as a Convention refugee, in Canada, by the Convention Refugee Determination Division of the Immigration and Refugee Board by virtue of exclusion ground 1F(a) for your involvement with and complicity in the commission of crimes against humanity. This decision was upheld by the Federal Court on *(date).*

It has been established by the Federal Court of Appeal that an exclusion under 1F(a) establishes inadmissibility to Canada under paragraph 19(1)(j) of the *Immigration Act.*

A19(1)(l)

Your application is refused because there is reason to believe that you are a member of the inadmissible class of persons described in paragraph 19(1)(l) of the *Immigration Act,* namely:

> (l) persons who are or were senior members or senior officials in the service of a government that is or was, in the opinion of the Minister, engaged in terrorism, systematic or gross human rights violations, or any act or omission that would be an offence under any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act,* except persons who have satisfied the Minister that their admission would not be detrimental to the national interest.

Sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act* state in part:

> "crime against humanity" means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.
>
> "genocide" means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that, at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not constitutes a contravention of the law in force at the time and in the place of its commission.
>
> "war crime" means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

Subsection 19(1.1) provides as follows

For the purposes of paragraph (1)(l) "senior members of or senior officials in the service of a government" means persons who, by virtue of the position they hold or have held, are or were able to exert a significant influence on the exercise of government power and, without limiting its generality, includes

(*a*) heads of state or government;

(*b*) members of the cabinet or governing council;

(*c*) senior advisors to persons described in paragraph (a) or (b);

(*d*) senior members of the public service;

(*e*) senior members of the military and of the intelligence and internal security apparatus;

(*f*) ambassadors and senior diplomatic officials; and

(g) members of the judiciary.

Specifically, there is reason to believe that, in *(specify time period)* you were a senior member or official with the government of *(specify the designated regime including the time period indicated in the designation)*, namely, *[specify one of the functions set out in subsection 19(1.1)(a) to (g) or indicate that the person was able to exert significant influence on the exercise of government power of the regime in question if function not included in 19(1.1)]*

APPENDIX G

SAMPLE 27 REPORTS

A19(1)(j)

This report is based on information in my possession as follows:

In (*specify time period)* while *(specify active in or member of organization including in which country)* Mr.---- committed *(if personal involvement)*/was complicit in *(if no personal involvement)* the following war crime, crime against humanity, or act of genocide*:(specify the activity plus short description from the list of crimes in* APPENDIX C*)* against (*identify the person or group of persons who has been victimized by the person concerned or by the organization to which he belonged).*

A19(1)(l)

This report is based on information in my possession as follows:

In *(specify time period)* Mr. ---- was a senior member or official of the government of *(specify the designated regime including the time period indicated in the designation),* namely, *(specify one of the functions set out in subsection 19((1.1)(a) to (g) or indicate that person was able to exert significant influence on the exercise of government power of the regime in question if function not included in 19(1.1)*

APPENDIX H

DESIGNATED GOVERNMENTS

1) **designated 16 June 1993:** the Bosnian Serb regime between 27 March 1992 until 10 October 1996;
2) **designated 12 October 1993:** the Siad Barré regime in Somalia between 1969 and 1991;
3) **designated 8 April 1994:** the former military governments in Haiti between 1971 and 1986, and between 1991 and 1994 except the period August -December 1993;
4) **designated 21 October 1994:** the former Marxist regimes of Afghanistan between 1978 and 1992;
5) **designated 3 September 1996:** the governments of Ahmed Hassan Al-Bakr and Saddam Hussein in power since 1968;
6) **designated 27 April 1998:** the government of Rwanda under President Habyarimana between October 1990 and April 1994, as well as the interim government in power between April 1994 and July 1994;
7) **designated 30 June 1999, amended 14 March 2001:** the governments of the Federal Republic of Yugoslavia and the Republic of Serbia (Milosevic) between February 28, 1998 and October 7, 2000;
8) **designated 14 March 2001:** the Taliban regime in Afghanistan from September 27, 1996.

APPENDIX I

REGIONAL WAR CRIMES UNITS

Atlantic Region Program Specialist CIC Atlantic Regional Office 1875 Brunswick Street Halifax, Nova Scotia B3J 2G8 Tel: 902-426-6920 Fax: 902-426-4241	**Prairies/NWT Region** Intelligence Officer – War Crimes Coordinator CIC Prairies/NWT Regional Office 25 Forks Market Road Room 400 Winnipeg, Manitoba R3C 4S9 Tel: 204-983-2188 Fax: 204-983-2867
Quebec Region Project Director War Crimes Unit CIC Enforcement 1010 St-Antoine Street West 2nd Floor, Montreal, Quebec H3C 1B2 Tel: 514-283-8171 Fax: 514-496-6613	**B.C./Yukon Region** War Crimes Coordinator Enforcement CIC Suite 700 300 West Georgia Street Vancouver, B.C. V6B 6C8 Tel: 604-666-8663 Fax: 604-666-9559
Ontario Region Operations Manager War Crimes Unit Greater Toronto Enforcement Centre 6900 Airport Road Entrance 2B Mississauga, Ontario L4V 1E8 Tel: 905-612-6089 Fax: 905-612-6082	**CPC Vegreville** Strategic Analysis Officer Case Processing Centre 6212 55th Avenue Vegreville, Alberta T9C 1W5 Tel: 780-632-8083/8011 Fax: 780-632-8100